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T H E
P R I V I L E G E S
O F T H E
Island of J A M A I C A
V I N D I C A T E D;

W I T H A N
I M P A R T I A L N A R R A T I V E

O F T H E L A T E D I S P U T E B E T W E E N T H E
Governor and House of Representatives,

U P O N T H E C A S E O F
M r . O L Y P H A N T,
A Member of that House.

*Ego certe, quin cum ipsa re bellum geram; hoc
est, cum regno, et imperiis extraordinariis,
et dominatione, et potentia, quæ supra leges
esse velit.*

Epist Bruti ad Atticum.

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James M. Smith
of the
Church of Jesus Christ of Latter-day Saints

Wm. of Lewis

Wm. of Lewis

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T H E

P R E F A C E.

THE following letter was not originally intended for the public, but for the satisfaction of a gentleman at whose request it was written; and whose knowledge of the subject made it unnecessary to dwell upon any circumstances, that did not immediately relate to the chancellor's right of discharging a commitment by the Assembly. As that gentleman has thought proper to commit it to the press, and the letter is by this means become the property of the public, it will not, it is presumed, be thought impertinent in a preface, to enlarge upon the steps that led to, and happened in consequence of that unlucky
a measure,

measure, which has occasioned all the contest between the governor and the people of Jamaica.

It is the common practice of men, who are engaged in the wrong side of a controversy, to keep as much as possible from the main question, and divert the attention of the public to some circumstance, to which it does not relate; especially, if they can fix upon one that is popular. This art has been very fully put in practice in the present controversy, as the honest endeavours of the assembly, to repel a most unprecented and unconstitutional attack upon their jurisdiction, has been falsely and impudently represented, both here and in England, as a mean and scandalous attempt to screen their members, from the payment of their just debts, by assuming privileges, to which they are not entitled. A full and plain representation of facts, will be the best way of doing justice in this case, as it will place the conduct of the contending parties in their proper light, and enable the impartial world to form a right judgment of the controversy. Such a representation is here endeavoured to be given, and will, it is hoped, not be unacceptable to the reader.

The sessions of assembly which began the 17th of OCTOBER, 1764, was opened in the usual manner, with a speech from the governor; and never did there surely come together, an assembly better disposed to carry on the public business with dispatch and harmony,

mony, and support administration; for it will appear by their minutes, that they were, in the whole course of the session, as unanimous in raising the supplies, and doing all that his excellency recommended to them, as they were in defending the rights of the people when they were, towards the latter end of it, so unhappily invaded. Such was the general disposition to oblige the governor, that nothing was refused, which he asked; scarcely any thing omitted, which he seemed desirous of having done; infomuch that, although there had been many rumours of dissatisfaction among the suitors of the court of chancery, for want of this court's being more frequently held; yet, the governor having in his speech thought proper to mention, how many causes he had dispatched, and how few there remained upon the list undetermined, the house would not enter into any examination of the facts, but took them upon the governor's word; and in their address to his speech, echoed back all the compliments and praise, that he could expect or wish for, from this part of it.

There was scarcely a debate, nor any thing that look'd like party in the house; and business was in great forwardness on the 8th of December, when a complaint was made of a breach of privilege, committed by Richard Thomas Wilson, a deputy marshal's deputy, in executing a writ on the coach-horses of John Olyphant, a member of the house; in

consequence of which, he, and Pierce Cooke, and Lauchlan M'Neil (who appeared to be aiding and assisting in executing the said writ;) were, by order of the house, severally taken into custody for breach of privilege. The generality of the members were, indeed, sorry to see a matter of this kind brought before the house, especially so late in the season, as it would retard the progress of more important business, and protract the sessions. The case of a member's availing himself of this privilege, was very far from being favoured by the house; and it is a truth, that a very great majority of the members were against entertaining the matter, if they could with any justice have avoided it; insomuch, that they set themselves to enquire, whether the privilege in question was such, as every member had a constitutional right to. Upon this occasion, the ablest lawyers in the house were consulted, and many volumes of law books were brought in; from which it did appear, to the conviction of every man in the house, that the privilege, claimed by Mr. Olyphant, was a lawful and constitutional right; and if he insisted upon it, that it could not, with justice or propriety, be refused him. He did insist upon it. What could the house do? They ordered the delinquents into custody, but still without any asperity towards them, and with so little intention of using them with severity or harshness, that the house would most certainly have released them,

them, upon the slightest concession: and Pierce Cooke, one of the parties and the plaintiff in the action, was told by several of the members, that he had only to petition (according to the forms, which the house prescribes, in the case of all those, who are in custody and not members) and set forth, that he did not intend to offend the house, and he would be discharged. This easy method of getting released was declined, and so low was the assembly held, by the said Pierce Cooke and Laughlan M'Neil, that they did not attempt to make any application for their liberty to the house, but applied, in the first instance to the chancellor for an Habeas Corpus.

All courts of justice (even the meanest quarter sessions) have a power of committing for contempt, and it is a piece of decency generally observed among themselves, that no court will discharge a commitment by another for contempt, in the first instance, and where the party committed has not made application to the court, by which he was committed. It was not imagined, that the governor would attempt to degrade, below the meanest quarter sessions, an assembly, which had ever shewn themselves ready to support his administration and consult his honour. A man in his station, possessed of a very moderate share of spirit and good sense, might with great ease and dignity to himself, and only by consulting the respect due to the

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representatives of the people, have repressed the insolence of these men, and insured a continuance of that peace and harmony in the country, which had, till this unhappy period, distinguished his excellency's administration, if, when he was first applied to, he had signified to the delinquents, that it was their duty to go by petition to the house, and that their declining to do so was an insult upon the house, which he could not, and would not give any countenance to, it is hardly possible, that they would have persisted in their insolence. Unhappily another method was adopted. The governor, after having granted an Habeas Corpus, did on the 18th of December prorogue the assembly until the next day; having first passed some of the bills, that were before him, and rejected others, particularly one of the money bills for subsisting the troops.

It appeared to the members, that this prorogation was made by the governor, to avoid his determining upon the commitment of these men; and it was therefore considered by them, as a tacit declaration of his power, as chancellor, to examine and discharge their commitments; and most certainly, as an encouragement to the delinquents, to persist in their insolence. The assembly found themselves, therefore, called upon by an indispensable duty, to assert their rights and vindicate their jurisdiction. It is part of the 26th of the standing rules of the house, that all
per-

persons in custody at the time of a prorogation, shall be taken into custody the next session, and that the speaker issue his warrant accordingly.

In compliance with this rule, when the house met on the 19th of December, Richard Thomas Wilson, Pierce Cook, and Lauchlan M'Neil, were again taken into custody, and in compliance with what they owed themselves and their country, the house came unanimously to several resolutions, declaratory of their legal rights and privileges, which the reader will see in the appendix ; one of these only is inserted here, as it will shew the temper and moderation of the house, and how far they were from claiming privileges, inconsistent with justice or the rules of the constitution. It is this.

Resolved, Nem. Con. That no member of this house hath any privilege in regard to his goods and chattles, except such as are necessary for his accommodation, during his attendance on the house.

After vindicating, in this calm, orderly and moderate manner, the constitution and authority of the house, they went with the utmost alacrity and dispatch into the public business, and were proceeding, with all possible application, to bring up the time that

was lost by the prorogation, and restore matters to their former condition. Every man wished and hoped, that the delinquents would have come to a just sense of their disrespect to the Assembly; and a very great majority of the house would, in that case, have agreed to release them. But these men, encouraged by what had passed, persisted with the utmost contempt, in declining to make any application to the assembly; and again applied to the governor, as chancellor, for an Habeas Corpus, which was granted.

Very few in the assembly imagined, that the chancellor would venture upon so desperate a measure, as that of discharging a commitment by the assembly; no considering person could reasonably suppose, that a man of the governor's reputed understanding and calmness, wou'd, upon mature deliberation, do an act, that must unavoidably force the assembly into measures, destructive of that harmony, which had till then so happily united their councils, in support of his administration.

Nothing could exceed the astonishment and concern of the assembly, when they were informed by their messenger, that the chancellor had released the prisoners. Hitherto, the assembly were only endeavouring to bring two private men, who had been guilty of a breach of privilege and contempt of the house, to an acknowledgement of their offence, in the ordinary course of their JURISDICTION.

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They were NOW to defend themselves, against an attack made upon their JURISDICTION, which they could not submit to, without betraying their constituents, and giving up the only means they had, of supporting their own authority or protecting the people. They immediately resolved themselves to a committee of the whole house, to consider of the best means of defending their constitution, from the danger to which it was exposed; and they came to several resolutions, the last of which was, To remonstrate to his majesty, by address, against the arbitrary and illegal proceedings of the Ch—
—r, and to implore his protection. A committee was appointed to draw up this address, which would have been compleated the next day; but before the house could meet, they were prorogued by Proclamation and afterwards dissolved.*

From what has been said, it will appear, how little foundation there is for charging the assembly, with contending only for a privilege from arrests; since it is evident, that they never had any contest with the governor, upon that subject.

There are two other charges brought, with as little foundation, against the gentlemen, who composed the majority of the late assemblies, which it will be proper to clear up and explain; the one is, that they refused to provide for the troops; and the other, that

* VIDE APPENDIX.

they did force the governor into the three dissolutions, which have followed this unhappy contest.

Against the first of these, the minutes of the assembly are appealed to, and the reader is desired to cast his eye over the extracts from those minutes, in the appendix to this work; from which it will appear, that, in the session, which preceded the first dissolution, the money bills were in as great forwardness, as could be expected. At the time of the dissolution, two of them had been twice read, and stood committed; and the third, which was, A BILL FOR RAISING SEVERAL SUMS OF MONEY, AND APPLYING THE SAME TO SEVERAL USES, FOR SUBSISTING FOR ONE YEAR THE OFFICERS AND SOLDIERS OF HIS MAJESTY'S 36th REGIMENT OF FOOT, had passed the assembly and Council, and was rejected by the governor; for what reason is best known to himself. It was an annual bill, and there were, it is true, some alterations made in it this year, which the governor, it is said, disliked, and which some gentlemen of the house for that reason, wished and endeavoured to get dropt: the third reading of the bill was therefore for some days postponed; but as the alterations were entirely in FAVOR of the soldiers, their wives and children, they were so popular, that those, who were desirous of having them dropt, found a great majority of the assembly determined to persist

sist in them. There is no maxim better known or established in our constitution, than that the people by their representatives, have the sole right of raising and applying money in what proportions and in what modes they think proper ; the other two branches of the legislature, having only a bare negative or affirmative, without any right of proposing or making alterations to a money bill. The governor could, therefore, have no constitutional right, of objecting to the aforesaid bill for subsisting the troops, and it is solely owing to him, that the soldiers were not provided for, in this session. It is owing to him too, that they were not provided for, by the last assembly, since it will appear that they were determined to give this a preference to all other business ; but were dissolved, before they could proceed to any.

Nothing can be more unjust, than to charge the assemblies with having given occasion to these dissolutions ; and this will appear, from a short review of their proceedings.

It has been shewn, that the first assembly was in the greatest harmony with the governor ; that they had made a considerable progress in the Business of the session, and in raising the supplies ; that they were called upon by a complaint of one of their members, to punish two men, who had violated the privileges of the house ; and that, their proceedings, in this matter, were not in the spirit of oppression, but according to the forms of the house, and the ordinary course of their jurisdiction. This being the case,

what call, what pretence had the governor to interfere, between the justice of the house and these delinquents? by declining all application to the assembly, and applying, in the first instance, to the chancellor for an Habeas Corpus, they added to their former transgression, the highest insolence and contempt, that could be offered to that body. It is the governor's duty to maintain the respect, that is due to each branch of the legislature: If the assembly were acting against these men oppressively, the governor, as the king's representative, had a constitutional power of interposing by a dissolution; but in no case had he, as chancellor, any right to judge of the commitments of the assembly, their's being a superior jurisdiction. This he ought to have known; there would have been dignity in his discouraging the insolence of this application; there would have been justice and propriety in remanding the delinquents, as chancellor. The governor acted the reverse of all this; he took upon himself, as chancellor, to examine a commitment by the assembly and to discharge it, opening thereby, a door to future applications of this kind, and endeavouring, as much as in him lay, to bring the authority of that house into an unconstitutional dependence upon the court of chancery, and into contempt with the people. The assembly, reduced to the alternative either of betraying the people and giving up their defence, or of opposing the attack by every means, which they could

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constitutionally employ, were, as has been shewn, proceeding vigorously to vindicate their injured jurisdiction; they could not with dignity, proceed to any business, whilst this remained unvindicated, from such an unexampled violation thereof. They resolved, by address, to remonstrate to his majesty, against this arbitrary determination of the chancellor, and they were, as has been seen, prevented from the exercise of that common right of every subject, by a sudden dissolution.

A new assembly was called to meet in March 1765: And it is justice to the governor to say, that no undue arts or influence were employed in the Elections; but the people were left to a free choice. The consequence of this was, that the new assembly was composed, like the old, of men zealous for the constitution and liberties of their country. Upon their meeting, the speaker did think it incumbent upon him to ask for the usual privileges in a manner more specific than ordinary, yet still in such, as was well warranted by parliamentary precedents; but tho' the terms in which the governors granted them, were doubtful and limited enough, to admit of exceptions in willing minds, so unwilling was the assembly to revive the business of privilege, that they acquiesced in silence, nor was there ever any attempt made, in this or the assembly, which was afterwards called to revive the subject or take the delinquents into custody. But the
record

record of the chancellor's determination still remain'd, as a yoke about their necks, and they could not with dignity to themselves or justice to their constituents, proceed to any business, whilst that was suffered to remain. Hoping that time and reflection had brought the governor to a just sense of the injury he had done the constitution, and thinking it no way below the dignity of any man, to acknowledge errors, upon conviction, and make reparation for injuries; they addressed his excellency, setting forth the ill consequences of the determination in question, and desiring he would give orders for having it expunged; and for this, the governor prorogued them forthwith, to a long day, and they were afterwards dissolved.

After an intermission of some months, another assembly was called, and much pains were taken and many arts tried, in the elections, to get such an one returned, as would answer certain purposes. It was asserted, with great confidence, during the elections, that his M—— in council had determined against us; and that, if a new assembly should adopt the maxims of the old, we should lose our legislature; and it was suggested to the people, that the members of the two last assemblies only meant to elude their creditors, and that the contest between the governor and them, was merely about a privilege from arrests. But all these unfair arts and these false and impertinent suggestions, were insufficient to mislead the people from their true interests and a very great majority was

was returned for this assembly, of men determined to support and vindicate the constitution. It is true, that the unhappy condition of the soldiers raised such a general compassion in the minds of men, that every member came determined to provide for the subsistence of the troops, and to give this a preference to all other business; it being a matter, for which the faith of the country stood engaged. In this disposition, the assembly met on the 13th of August; and Mr. Charles Price, jun. who was speaker of the two last assemblies, was unanimously chosen to preside in this.

After he was presented and approved of, he did think proper to decline asking for the usual privileges; and he was probably moved to do so, as well, from an indignation at the foul aspersions, which had been cast upon former assemblies, as to take away all occasions which any claim of privilege might give, to interrupt the public business. Motives, sure very laudable and becoming! After some embarrassment, which this visibly occasion'd, his excellency opened the sessions with a speech, wherein he recommended to the house to proceed to business; but before they could do so, and even before they left his presence, they were adjourned from 13th to the 15th of August.

In this interval, a paper, said to be a copy of the order or resolution of his M—— in council, before mentioned, was shewn to several of the members, by an officer of the crown, who yet refused to part with it, or give

give a copy of it ; with what view, is not hard to guess. But this expedient did not probably answer its purpose, for on the 15th, the speaker had not taken the chair long, when the house was sent for up to attend the governor ; there, to the astonishment of every one, his excellency, after putting the speaker in mind of his having omitted to ask for the usual privileges, on the first day, demanded of him, whether he would then ask for them? to which he was answered in the negative. His excellency then put the same question a second time and the speaker said, I SHALL NOT. He might have added that he could not, or ought not ; since it is most certain, that he could then do no act without the approbation and command of the house. If the governor had a mind to know the sense of the assembly upon the speaker's conduct, the regular way of coming to this knowledge was, by message to the house. It is amazing, that a man of Mr. L———'s experience in business, should take so irregular and unparliamentary a step. It is more so, that he should suddenly dissolve an assembly, so unanimously disposed to provide for the troops ; only for a mere act of the speaker's, which the house neither consented to, nor avowed, and which they could not therefore, with any justice, be made answerable for. But so it happened ; they were immediately, for this AVOWED reason, Dissolved ; and the world is to judge, whether they gave any cause for this dissolution.

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The reader will observe, that two assemblies were thus dissolved, for asserting their liberties and vindicating their violated jurisdiction ; he will see, no doubt, with astonishment, a third dissolved, not for the same Reason, not for any act of their own, but because their speaker omitted asking for the usual privileges ; even those privileges, which they had so often been reproached with meanly availing themselves of. There is an inconsistency in this part of the governor's conduct, very difficult to be accounted for ; but an obstinate perseverance in error, will ever lead men into inconsistencies. Let it, for argument sake, be supposed, that the speaker was wrong ; yet how could this affect the assembly ? The custom of the speaker's asking for privilege, is a mere act of manners ; an act of the speaker's own, upon which he can take no instructions from the house ; for, after the choice of a speaker, the house, by the rules of parliament, can do no business, until he has been approved ; after which, and not before, he is the mouth of the house, and can do no act, but by their command ; and history informs us, that when Charles the Ist. went into the house of commons, and demanded some questions of the speaker Mr. Lenthall, he answered upon his knees, that he had neither eyes to see, ears to hear, nor tongue to speak, save what he was commanded by the house. This will be further illustrated, by comparing the style, in which the speaker ad-

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dressed

dressed himself to the king, when asking for privileges, with that, which he uses upon all occasions besides. At all other times, the speaker delivers himself as *By command of the house, and in the name of all the commons of England*; but when he asks for privilege, he does it in the first person and as from himself (*I am a suiter to your majesty*) and upon such occasions, speakers in England have made it one of their requests, that no mistakes or *omission of theirs*, might be imputed as a fault to the house.

From this account of the proceedings of three assemblies, from the beginning of the contest in the first, until the dissolution of the last, the reader will, it is presumed, see, how their conduct has been misrepresented; and particularly, with how much malice and falsehood it has been alledged, that they were only contending with the governor, for an exemption from paying their debts. He will see, that they never had any contest with his excellency about a privilege from arrest; and that when, to avoid such a contest, the speaker declined asking for that privilege, the governor made it a cause for dissolving the last assembly; and he will also see, that their only contest with him has been, about his violating their undoubted jurisdiction. *This*, indeed, is the question, which at present divides the governor, from the people of this colony, and the reader will, it is presumed, see, in the following letter, of how much importance it is, to every individual in the community.

CONCERNING THE
PRIVILEGES, &c.

Dear SIR,

THE unhappy difference between the Governor and Assembly, has already thrown the country into so much confusion, and may in its course have such fatal consequences, that it demands the serious attention of every one, who has any property in Jamaica, or any connexion with it. You and I have frequently in conversation, discussed this subject. I have, since I saw you, considered it with all the attention in my power; and I will, since you desire it, give you, as fully and clearly as I can, my thoughts upon it.

It is needless in this place to give a detail of all those proceedings in Assembly, which led to the commitment of Pierce Cooke and Lauchlen McNeil, as they have been fully and fairly stated, in an address to the freeholders, published in the St. Jago Intelligencer, since the dissolution of the last Assembly; and every one is possessed of them. I shall however for your satisfaction, annex at the end of

As, to the subject of this

this letter, a fair extract of them, from the minutes of the Assembly. It will be sufficient here to say, that the House voted said Pierce Cooke and Lauchlen M'Neil guilty of a breach of privilege, for causing a writ to be executed upon the coach horses of Mr. Olyphant, one of their members, whilst the Assembly was sitting; that they were, by virtue of the speaker's warrant * taken into custody by the messenger of the House; and that they were released by the governor, as chancellor, on the return of a writ of *Habeas Corpus*, which he granted upon the statute of 31 Car. II. and that his determination thereon is made a record of the court of Chancery.

The Assembly consider their privileges, as derived to them from their Constituents; and that they are not concessions from the crown, but the right and inheritance of the people; they consider their jurisdiction, *in cases of privilege*, as complete in their own body, and in such cases, that no other court can have any right to controul their determinations, or discharge their commitments; and they therefore consider this act of the chancellor's, as a dangerous violation of their privileges, and such an encroachment upon their jurisdiction, as would, (if submitted to) strip them of all authority, and disable them from either supporting their own dignity or giving the people of this Colony that protection against arbitrary power, which nothing but a free and independent Assembly can give.

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* For a copy of the warrant and decree, vide the end.

The question here, is not, whether the Assembly have done right or wrong, in ordering those men into custody, (for I hope to shew, that they are the only competent judges of their own privileges) it is, whether the governor, as chancellor, could legally discharge men upon an Habeas Corpus, who were committed by order of the Assembly, for a breach of privilege? but as their right of privilege is founded on a presumption, that the Assembly of this Island holds the same rank, in the system of its own constitution, as a British House of Commons does, in that of our mother country; I will first endeavour to shew, from the most authentick records and authorities, that the privileges and the jurisdiction in question, have ever been exercised and enjoyed by the House of Commons. The instances for my purpose, to be found in the Journals of the Commons, are innumerable; but I shall trouble you with a few only, which are leading cases, and of such authority, that they have ever since been admitted by the House of Commons, as governing precedents; and by all inferior courts, as rules to direct their conduct in such cases.

The first case I shall mention, happened in the time of Henry VIIIth, a time when, the Commons of England holding but an inconsiderable share of the land, the power of the House of Commons was no way comparable to what it is at this day. It is the case of George Ferrers, in 34 Henry VIIIth. and I shall give it you at large, as it is in the par-

liamentary history. It is taken from *Hollingshead*, one of our antient chroniclers, who is the more circumstantial about it, because (says he) as the case has been diversly reported, and is commonly alledged, as a precedent for the privilege of Parliament; he had endeavoured to learn the truth thereof, and to set forth all the circumstances at large, from those, who by their instructions, ought best to know and remember it.

The author tells us the member's name was
 ‘ George Ferrers, Esq; a servant of the king,
 ‘ and elected a burges for the town of Ply-
 ‘ mouth in Devonshire: that one day as he
 ‘ was going to the Parliament House, he was
 ‘ arrested by a process out of the king's bench,
 ‘ at the suit of one White for the sum of two
 ‘ hundred marks, for which he stood engaged
 ‘ as a surety for one Weldon of Salisbury, and
 ‘ carried to the Counter in Broad-Street. And
 ‘ that sir Thomas Moyle, knight, the speaker,
 ‘ being informed of this, acquainted the House
 ‘ with it, who forthwith ordered the serjeant
 ‘ at arms to repair to the said prison, and de-
 ‘ mand the prisoner.

‘ The serjeant went immediately to the
 ‘ Counter; but the clerks and officers there,
 ‘ were so far from delivering the prisoner,
 ‘ that they forcibly resisted the serjeant, broke
 ‘ his mace, and knocked down his servant.
 ‘ During the squabble, the two sheriffs of
 ‘ London, Rowland Hill and Henry Suchcliff,
 ‘ came thither, to whom the serjeant com-
 ‘ plained of this abuse, and of them required
 the

‘ the delivery of the imprisoned member ; but
 ‘ they not only denied to deliver him, but
 ‘ treated the serjeant very contemptuously,
 ‘ and he was forced to return without him to
 ‘ the House.

‘ The Commons, after some debate on the
 ‘ case, soon came to a resolution to send their
 ‘ serjeant to the sheriffs house, and require
 ‘ the delivery of the prisoner ; but before the
 ‘ serjeant at arms came with the second mes-
 ‘ sage, the sheriffs had been told how hein-
 ‘ ously the matter was taken, and therefore
 ‘ they now delivered the prisoner to him with-
 ‘ out any hesitation ; but the serjeant’s orders
 ‘ went further : he charged the sheriffs to ap-
 ‘ pear personally before the House at eight o’
 ‘ clock the next morning, and bring with
 ‘ them the clerks of the Counter, and such
 ‘ other officers as were **concerned** in the af-
 ‘ fray.

‘ The next day the sheriffs, &c. appeared
 ‘ at the bar of the House, where the speaker
 ‘ charged them with the contempt and mis-
 ‘ demeanor, and commanded them to answer
 ‘ immediately without allowing them any
 ‘ council ; though sir Roger Cholmely, re-
 ‘ corder of London, and others of the city
 ‘ council offered to speak in the cause. In the
 ‘ end the sheriffs, and White the prosecutor
 ‘ were committed to the Tower, and the rest
 ‘ to Newgate ; there they remained two days,
 ‘ and then on their own petition, and at the
 ‘ humble request of the lord mayor of London
 ‘ and other friends, they were discharged.

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The same authority informs us that the king, being advertized of these proceedings, called before him the lord chancellor and his judges, with the speaker of the House of Commons, and several of the chief members of that House, to whom he declared his opinion to this effect.

“ He first commended their wisdom in
 “ maintaining the privileges of their House,
 “ which he would not have infringed in any
 “ point. He alledged that he, being the
 “ head of the Parliament, and attending in
 “ his own person on the business thereof,
 “ ought in reason to have privilege for him-
 “ self and all his servants in attendance on
 “ him ; so that if Ferrers had been no bur-
 “ gess, but only *his* servant ; in respect of
 “ that, he ought to have privilege, as well
 “ as any other. For I understand, (says he)
 “ that you enjoy the same privilege, not only
 “ for yourselves, but even for your cooks and
 “ horse-keepers. My lord chancellor here
 “ present hath informed me, that when he
 “ was speaker of the lower house, the cook
 “ of the Temple was arrested in London on
 “ an execution upon the statute of staple ;
 “ and, because the said cook served the speaker
 “ in that office, he was taken out of execu-
 “ tion by the privilege of Parliament. Like-
 “ wise the judges have informed us, that we
 “ at no time stand so high in our estate royal
 “ as in the time of Parliament ; when we,
 “ as head, and you as members, are con-
 “ joined and knit together into one body po-
 “ litick :

“ litick: so that whatsoever injury is done or
 “ offered during that time against the meanest
 “ member of the House, is judged as done
 “ against our own person, and whole court
 “ of Parliament; the prerogative of which
 “ court, is so great, that, as our learned in
 “ the laws inform us, all acts and proceſſes,
 “ coming out of any other inferior courts,
 “ must for that time cease, and give place to
 “ the highest.

“ And as touching the plaintiff in this
 “ cause, it was a great presumption in him,
 “ knowing our servant to be one of this
 “ House, and being warned of it before,
 “ still to prosecute this matter out of time;
 “ and therefore was well worthy to lose his
 “ debt, which I don't wish, and must com-
 “ mend your equity that, having lost it by
 “ law, you have restored the same against
 “ him that was his debtor; and if it be well
 “ considered, what an expence it hath been
 “ to ourself and you all, as well as loss of
 “ time, which should have been employed
 “ in affairs of our realm, to sit here near a
 “ fortnight, about this one private case; he
 “ may think himself better used than his de-
 “ sert. This I hope will be a good example
 “ to others to learn better manners, and not
 “ to attempt any thing against the privilege
 “ of this high court of Parliament, but to
 “ stay for a proper opportunity. This is my
 “ opinion; and if I err, I must refer myself
 “ to the judgment of our lord justices here
 “ present, and the other learned of the laws.”

UPON

UPON WHICH SIR EDWARD MONTACUTE, LORD CHIEF JUSTICE, VERY GRAVELY GAVE HIS OPINION, CONFIRMING BY DIVERS REASONS ALL THAT THE KING HAD SAID; WHICH WAS ASSENTED TO BY ALL THE REST, NO ONE SPEAKING TO THE CONTRARY.

The next case I shall quote happened in the reign of JAMES Ist. when the absurd and slavish Doctrines of DIVINE and HEREDITARY RIGHT and PASSIVE OBEDIENCE and NON-RESISTANCE, were first broached: broached by that anointed Pedant, and, after the manner of courts, adopted by all his courtiers. To a King and a court, who carried the notions of kingly RIGHT and kingly POWER to such a blasphemous height, and set so little value on the liberties of the people, nothing could be more obnoxious than the House of Commons; and accordingly we find many instances of the affronts offered to that body.

The first day the House of Commons were sent for to attend that king, in the House of Lords, SIR HERBERT CROFTS, one of the members, coming up with others to hear the king's speech, had the door shut upon him, and one Bryan Tashe, a yeoman of the guard, violently repulled sir Herbert, saying, GOODMAN, BURGESS YOU COME NOT HERE.

A book was written by the bishop of Bristol, which contained, what the House thought, some reflections upon their proceedings.

Sir Thomas Shirley, member for Stayning, had been committed prisoner to the Fleet, on
an

an execution soon after his return, and before the Parliament met.

The king, in short claimed a right of having the returns of elections examined by his chancellor ; and it became then, for the first time, a fashionable opinion, that the privileges of the Commons were only concessions of the crown, granted upon the speakers request, at the meeting of every new Parliament.

Luckily for posterity, the House of Commons were in no disposition to subscribe to such doctrines, to submit to affronts, or to yield up their privileges to the dictates of an undeserving monarch, or the attempts of a profligate court. The yeoman of the guard was obliged to ask pardon upon his knees, at the bar of the House, and to receive a reprimand from the speaker.

The bishop of Bristol, tho' a member of the House of Lords, was obliged to confess his error, and recant the offensive passages in his book.

The warden of the Fleet for taking sir Thomas Shirley, was sent to goal ; and not released, until he had first on his knees, at the bar of the House, confessed his error and asked pardon. The House did more ; not content with making examples of these offenders, they have left to posterity a noble monument of their knowledge of the constitution, and of their virtue and spirit in resisting the attacks, that were made upon it. It is an apology from that House to king JAMES ; in which, the rights and privileges of the Com-

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mons

mons are asserted, in the most manly and spirited terms. The apology is too long to be inserted in this place, I will only transcribe from it some passages, that are apposite to my subject.

“ And contrarywise with all humble and due
 “ respect to your Majesty Our Sovereign Lord
 “ and Head, against those misinformations we
 “ most truly avouch.

“ *First.* That our Privileges and Liberties
 “ are our RIGHT and DUE INHERITANCE,
 “ no less than our very LANDS and GOODS.

“ *Secondly.* That our Privileges and Liber-
 “ ties cannot be withheld from us, denied,
 “ or impaired, but with apparent Wrong to
 “ the whole State of the Realm.

“ *Thirdly.* And that our making of request
 “ in the entrance of Parliament, to enjoy our
 “ Privilege, is an act only of manners, and
 “ doth weaken our Right no more than our
 “ suing to our King for our lands by petition;
 “ which form, though new and more decent,
 “ than the old by PRECIPE, yet the Subject's
 “ Right is no less new than old.

“ *Fourthly.* We avouch also, that our
 “ House is a COURT of RECORD; and so
 “ ever esteemed.

“ *Fifthly.* That there is not the highest
 “ standing court in this land, that ought to
 “ enter into competency, either for dignity or
 “ authority, with this high Court of Parlia-
 “ ment; which with your Majesty's royal
 “ assent gives laws to other courts, but from
 “ other courts receives neither laws nor orders.

“ *Sixthly.*

“ *Sixthly, and lastly.* We avouch that the
 “ HOUSE OF COMMONS is the sole proper
 “ Judge of Return of all such Writs, and of
 “ the Election of all such Members as belong
 “ unto it; without which the freedom of elec-
 “ tion were not intire :

“ And that the Chancery, though a stand-
 “ ing court under your Majesty, be to send
 “ out those writs, and to receive the returns,
 “ and to preserve them; yet the same is done
 “ only for the use of the Parliament. *Over*
 “ *which neither the Chancery, nor any other*
 “ *court, ever had, or ought to have, any man-*
 “ *ner of Jurisdiction.*”

It is impossible to read the history of the next reign, that of *Charles the First*, especially the 14 or 15 first years of it, without conceiving the highest reverence for the memory of those great men, who stood forth at that critical period, in defence of the Constitution. Never was there at any one time in the House of Commons, nor perhaps in any other Assembly, such a number of men, eminent for learning, for good sense, for virtue and courage, as appeared in the House of Commons, during the four first Parliaments of that unhappy Prince: and it is owing to the virtues and abilities of an *Elliot*, a *Cook*, a *Littleton*, a *Grenville*, a *Philips*, and many others recorded in the histories of those times, that the Subjects of Britain are not at this day as much enslaved as those of France and Spain. Upon all points of controversy about the Constitution, much respect and deference will ever be shewn to the

sentiments and opinions, and much more to the determinations of those venerable patriots : and I will therefore, without any apology, give you the sentiments of some of them, upon the breach of privilege in Mr. *Rolls* case, in the 4th year of *Charles* the 1st, extracted from the Parliamentary History.

A complaint was made to the House of Commons by Mr. *Rolls*, a Member of the House, and a merchant, that his goods were seized by the officers of the customs ; upon which the officers of the customs were sent for, and examined by the House.

Sir *John Elliot* said,

“ Three things are involved in this complaint :

“ 1st. The Right of the particular gentleman.

“ 2d. The Right of the Subject.

“ 3d. The Right and Privilege of the House.

“ Let the committee consider of the two former ; and for the violation of the Liberties of this House, let us not do less than our fathers. Was ever the information of a Member committed to a committee ? Let us send for the parties.

“ Mr. *Daws*, one of the customers, being called in to answer the point of Privilege in taking Mr. *Rolls's* goods, being a Member of this House, said, he took Mr. *Rolls's* goods by virtue of a commission under the Great Seal, and other warrants remaining
“ in.

“ in the hands of Sir *John Elliot* ; that he
 “ knew Mr. *Rolls* to be a *Parliament Man* ;
 “ and that Mr. *Rolls* demanded his Privilege,
 “ but he did understand that this Privilege ex-
 “ tended only to his *Person*, and not to his
 “ *Goods*, &c.

“ Sir *John Elliot*. The heartblood of the
 “ Common-wealth receiveth life from the Pri-
 “ vilege of this House.

“ It was resolved by question, that this shall
 “ be presently taken into consideration, and
 “ being conceived a business of great conse-
 “ quence, it was resolved that the House shall
 “ be formed into a committee for the freedom
 “ of debate.

“ Mr. *Littleton* argued. All Privileges are
 “ allowed for the benefit of the Common-
 “ wealth. The Parliament's Privilege is above
 “ any other, and the Parliament *only* can de-
 “ cide Privilege of Parliament, and not any
 “ other court.

“ Sir *Robert Philips*. Thus you see how
 “ fast the Prerogative of the King doth in-
 “ trench on the Liberty of the Subject, and
 “ how hardly it is recovered ! He then cited
 “ many precedents, wherein the goods of a
 “ Member of Parliament were privileged from
 “ seizure in the Exchequer. In 12 *Eliz.* it
 “ was resolved in Parliament, that twenty days
 “ before, and twenty days afterwards was the
 “ time of Privilege.

“ And the committee of the whole house
 “ reported, that they took into consideration
 “ the violation of the Liberties of the house
 “ by

“ by the customers, and at last they resolved
 “ that a Member of the house ought to have
 “ Privilege of Person and Goods.

In these authorities, taken from the proceedings of Parliament, I have confined myself to the more antient ones, omitting purposely those of latter times ; not because the modern journals do not furnish any, but because they occur so frequently, and are so well known, that I think it needless to trouble you with them. Scarcely a session passes without furnishing instances of one or both houses of Parliament, exercising the Power of committing for breach of Privilege, and of each house's judging of its own Privileges, without controul. Even in the very last sessions of Parliament, we find by the public papers, that a Peere's in her own right, having been arrested during the sitting of parliament, the house of Lords imprisoned all the parties concerned in bringing the action and executing the writ; and obliged them to pay all costs : And every one knows, that in this case, the Privileges of both houses are equal.

It is then clear, I think, from the constant declarations and proceedings of Parliament, that the house of Commons hath at all times enjoyed and exercised, the sole Right of judging of its own Privileges, and of punishing for breach of Privilege.

I will now shew you, by the most uncontroverted law authorities, and by the concurrent testimonies of the judges, and their declarations from the earliest ages of the English Constitution,

Constitution, down to our own time, that neither the court of Chancery, nor any court in Westminster-hall can, or ever did, presume to discharge a commitment by the house of Commons; and that, the judges in England have always held and declared themselves, incapable of giving judgment upon the Privileges of either house of Parliament, as being, *Extra Sphæram activitatis*.

“ *Thomas Thorp* being speaker of the house of Commons, 31 *Hen. VI.* was in time of prorogation Arrested and Imprisoned at the suit of *Richard, Duke of York*, upon a judgment obtained in the Exchequer.

“ The Commons, at the re-assembling of that Parliament, wanting their Speaker, sent up some of their Members to make complaint thereof to the King and Lords, and to desire their Speaker’s release.

“ Upon this the Duke gives the Lords an account of the whole matter.

“ Whereupon (saith the Parliament Roll) the Lords Spiritual and Temporal, not intending to impeach or hurt the Liberties, and Privileges of them that were common for the Commons of this land to this present Parliament, but equally after the course of law to minister justice, and to have knowledge what the law will say in that behalf.

“ Opened and declared to the justices the premises; and asked of them, whether the said Thomas should be delivered from prison, by force and virtue of the Privileges in Parliament or not?

“ To

“ To the which question the chief justice,
 “ in the name of all the justices, after *said*
 “ communication and mature deliberations had
 “ among them, answered and said, that they
 “ ought not to answer to that question.

“ And then follows

“ The Judges recognition.

“ *First.* For it hath not been used before
 “ time that the Justices should in anywise de-
 “ termine the Privileges of this high Court of
 “ Parliament.

“ *Second.* For it is so high and mighty in
 “ its nature.

“ *Third.* That it may make law.

“ *Fourth.* And the determination and
 “ knowledge of that Privilege belongeth to
 “ the Lords of the Parliament and not to the
 “ Justices.

“ These several cognitions so materially
 “ weighty in themselves, being published and
 “ declared by all the Judges of England, and
 “ that before the Parliament, as a fixed and
 “ standing rule of law, and as a memorial to
 “ all posteritys enrolled among the records of
 “ the said high Court of Parliament, *for ever*
 “ *to endure.*”

And this declaration has, in all succeeding
 times, been of such weight and authority, that
 I will venture to assert, there is not *a single in-*
stance, where the court of Chancery, or any in-
 ferior court, ever presumed to discharge a com-
 mitment of the house of Commons, for breach
 of Privilege. And it will appear, in the two
 following

following instances, where it was attempted, that, by the opinions of the most eminent lawyers, by the opinion of the lord keeper of England and all the judges, and by a solemn judgment of the court of king's bench, none of those courts *can discharge or take cognizance of*, the commitment of the house of commons.

The next case I shall mention, is taken from the debates in Parliament ; a case, which has been extremely well remarked upon, in a pamphlet lately published, entitled, *A vindication of the proceedings of the Assembly, &c.* but it is too apposite to be omitted here ; especially as it was, I think, the first attempt made, since the above celebrated determination in Thorp's case, of drawing the jurisdiction and judgment of the house of Commons, *ad aliud examen*.

In 1680. A motion was made in the house of Commons, in behalf of judge *Raymond*, that one *Sheridan*, in custody of the serjeant at arms, by order of the House, had applied for his *Habeas Corpus*, which the judge denied, *because he was committed by order of the House*, desiring the opinion of the house. Upon this occasion, sir *William Jones*, a member of the house, and as able a lawyer as any in England, asserted in the House ; “ That there
“ is nothing in the *Habeas Corpus Act*, that
“ doth reach, or can be intended to reach,
“ to any commitment made by either house
“ of Parliament. The preamble and all parts
“ of the Act do confine the extent of the Act
C “ to

“ to cases bailable, and direct such courses
 “ for the execution of the Act as cannot be
 “ understood should relate to any commit-
 “ ment made by either house. A commit-
 “ ment of this house is always in the nature
 “ of a judgment, and the Act is only for cases
 “ bailable, which commitments upon judg-
 “ ment are not.”

Here, then, is a judge, *refusing even to grant* a writ of habeas Corpus, for a commitment of the house of Commons, and this not above two years after the passing of the habeas Corpus Act; and, sir William Jones declaring to the house that, that Act was not intended, nor could not be understood to extend, to commitments by either house of Parliament. The opinions of these eminent lawyers are of great authority, from the characters and reputation of the men; but they receive much additional weight from a consideration of the time, in which they were given: for the law presumes, that the intention of an Act of Parliament is best known from those, who lived at or near the time, in which such Act passed. And you will accordingly find this authority, supported by the opinion of the lord-keeper, and all the judges in England, in the next case I am going to mention; that is, the celebrated case of the *Aylesbury* men.

As this was the first time, that the jurisdiction and the power of commitment of the house of Commons ever was made a question of in Westminster Hall; as the question in
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the course of it, brought on a contest between the house of Lords and the Commons; as it was discussed, both in Parliament and in Westminster Hall, by the ablest lawyers and the greatest men in England; and, as there was a solemn judgment upon it in the King's Bench, which is now a record and a standing rule, in all cases of the same kind; I will, with your leave, insert the case.

“ A complaint was made by the honourable
 “ house of Commons, that, since their last re-
 “ solutions in the cause of *Ashby and White*,
 “ several actions had been brought by *J. Paty*,
 “ *J. Oviat*, *J. Peyton*, *H. Basse* and *D. Horne*,
 “ and prosecuted by *R. Mead* against the con-
 “ stables of *Aylesbury*, in breach of the privi-
 “ leges of that honourable house: whereupon
 “ they were pleased to order the matter of the
 “ said complaint to be heard at the bar of
 “ their house, and ordered the persons con-
 “ cerned to attend there, and appointed a day
 “ accordingly.

“ The parties appeared (all but *Mead*)
 “ when the witnesses were examined, and
 “ they severally called to the bar of the
 “ house, and then withdrew, and upon full
 “ hearing, the house were pleased to order
 “ their speaker to issue out warrants, for
 “ committing them (being taken into custo-
 “ dy) to her Majesty's goal of *Newgate*.

“ In the *Michaelmas* vacation 1704 they
 “ prayed an *Habeas Corpus* upon the statute
 “ 31. *Cha.* 2d; upon the return of which all
 “ the judges met, and advised whether they

“ were bailable by that statute? who were
 “ unanimously of opinion, THAT THEY
 “ WERE NOT; and accordingly they were re-
 “ manded. And in Hilary term following,
 “ they moved the court of queen’s bench
 “ for an habeas corpus, by the common law,
 “ which was granted; upon the returns
 “ whereof the judges of the queen’s bench
 “ desired the assistance of the rest of the
 “ judges whether they might be discharged?
 “ who were all of opinion, except the *Lord*
 “ *Chief Justice Holt*, that they ought to be
 “ remanded.”

But, as it was argued in the queen’s bench
 by counsel, and afterwards the judges deliver-
 ed their opinions *SERIAM*, I will, in order
 to shew the matter more clearly, extract such
 parts of the arguments of those judges, upon
 whose opinions the court founded its deter-
 mination, as are applicable to the case in ques-
 tion here. I make no extracts from the ar-
 guments of lord chief justice Holt, as his
 opinion in that case, is *not law*, having been
 over-ruled by his brethren, upon a consulta-
 tion with all the judges of England.

“ Mr justice *Gould*, and Mr. justice *Powis*
 “ said, they would chiefly insist upon *Legem*
 “ *et Consuetudinem Parlamenti*; but they
 “ would first maintain the form of the war-
 “ rant.

“ Objection. That this is a commitment
 “ by the speaker only; for that the warrant
 “ does not run, ordered by the knights
 “ citizens and burgeses in Parliament assem-
 “ bled,

“ bled, according to the precedent in my
 “ lord Shaftsbury’s case, 1. Mod. 144.

“ Answered by the Judges.

“ That it is good, being according to their
 “ form; and that it must be presumed the
 “ speaker’s warrant was by order of the
 “ house.

“ Objection. This commitment is for
 “ bringing their action at law, and for taking
 “ the due course of law.

“ Answer. What is privilege, but dispen-
 “ sing with the law? the generality of breach-
 “ es of privilege are for taking the due course
 “ of law. If you go to scanning the words
 “ of a commitment, who knows not that
 “ most commitments, that would hold for
 “ such, do express the cause but shortly, and
 “ but just give a hint? and the law does pre-
 “ sume that the higher courts do understand
 “ what they do, and therefore are not tied up
 “ to such strictness as inferior courts.

“ Objection. *Shall* the house of Commons
 “ take a despotick power to regulate how ac-
 “ tions shall be brought, and what actions
 “ shall not be brought?

“ Answer. *Can* we suppose that high
 “ court would stop the progress of the com-
 “ mon law of England? ’tis highly disho-
 “ nourable to have such thoughts; and no
 “ body dares think so, or will presume to
 “ say so; and people would laugh at one that
 “ should say, the house of Commons will
 “ take away the liberties of the people.

“ There

“ There is no better way to determine the
 “ jurisdiction of either house of Parliament,
 “ than by usage and custom ; as the bounds
 “ of parishes are. That there is no prece-
 “ dent or case, not so much as an opinion,
 “ yet cited, that the courts of Westminster-
 “ hall have a power to judge of the autho-
 “ rity of the house of Commons ; or that
 “ the orders and commitments of the house
 “ of Commons, can be discharged in West-
 “ minster hall ; nor were they ever before
 “ attempted to be discharged here upon such
 “ a commitment by the house of Commons ;
 “ which is a good argument, according to
 “ my lord Coke’s rule, that we want power
 “ to do it. It would be impossible for us to
 “ judge of the privileges of the house of
 “ Commons ; for there are no printed books
 “ of their privileges, nor is there any means,
 “ by which we can attain to the knowledge
 “ of them ; but their customs and privileges
 “ are kept, as Arcanas, in the rolls and re-
 “ cords of their own house ; and their pri-
 “ vileges depend altogether upon precedents
 “ in Parliament. They do judge it as a con-
 “ tempt and breach of their privileges ; and
 “ who shall say nay ? they are proper judges
 “ of the matter ; and upon the return it ap-
 “ pearing they were committed by the house
 “ of Commons, our jurisdiction ceases. So
 “ far Gould and Powis.

Mr. Justice POWELL, said,

“ That the Commons have a judicature,
 “ not

“ not by the common law ; but do judge of
 “ breaches of privilege and contempts to their
 “ house, *secundum legem et consuetudinem*
 “ *Parliamenti* : 4 Inst. 23. and by this law
 “ these persons are committed, and now are
 “ brought to be discharged by the common
 “ law. The resolutions of the Commons
 “ upon the breach of privileges, is a judg-
 “ ment, and the commitment an execution
 “ of it, which cannot be controuled, for this
 “ would be to draw it *ad aliud examen*, and
 “ then the Commons would not be supreme
 “ judges of their own privileges.

“ That this court may keep other inferior
 “ courts within their jurisdiction, but not
 “ the house of Commons : for no prohibition
 “ was ever granted to that court, tho’ they
 “ exceed jurisdiction. So if the house of
 “ Lords do exceed, or take cognizance of
 “ matters in the first instance ; no prohibition
 “ would lie : for no inferior court can prohi-
 “ bit a superior ; and no prohibition was
 “ moved here ; nor could we have granted it ;
 “ for the house of Commons is superior to
 “ all ordinary courts of law.

“ In the 4th Inst 50, it doth not belong
 “ to the judges to judge of any law, privi-
 “ leges, or customs of Parliament : for the
 “ laws, customs, and privileges of Parlia-
 “ ment are better to be learned out of the
 “ rolls of Parliament and other records, and
 “ by precedents and continual experience,
 “ than can be expressed by any one man’s
 “ pen.

“ In

“ In 4 Inst. every court of justice hath laws
 “ and customs for its direction ; some by the
 “ common-law, some by the civil and can-
 “ non-law, some by particular laws and cus-
 “ toms : so the high court of Parliament
 “ *Suis propriis legibus, et consuetudinibus subsis-*
 “ *tit* : that judges ought not to give any opi-
 “ nion of a matter of Parliament ; because
 “ it is not to be decided by the common
 “ laws, but *secundum legem et consuetudi-*
 “ *nem Parliamenti* ; and Coke says, *Ista lex*
 “ *ab omnibus est querenda, a multis ignorata,*
 “ *a paucis cognita.* Now who shall judge
 “ this no breach of privilege ; when the house
 “ of Commons, who are the proper judges
 “ of their own privileges, have adjudged it
 “ to be a breach of their privileges ?

“ The judgment of the court, as it was
 “ made up, upon the roll by the directions
 “ of my lord chief justice Holt, was *Quia*
 “ *cognitio causæ captionis et detentionis predictæ.*
 “ *Non pertinet ad curiam dominæ reginæ, ideo*
 “ *remittitur.*” Which is as strong and con-
 clusive against the jurisdiction of the courts
 in Westminster-hall, in cases of commitment
 by the house of Commons for breach of pri-
 vilege, as words can make it. It has so much
 the force of a law with the judges in West-
 minster-hall, and is of such authority, that,
 in the case of the honorable Alexander Mur-
 ray, committed by order of the house of Com-
 mons about 12 or fourteen years ago, (the
 only case of an habeas corpus asked for, on
 a commitment of the house of Commons,
 since

since the determination in that of the Aylebury men) the cause of commitment return'd by the goaler was only an order of the house of Commons, without any crime alledged; and the Judges said, *They could not question the authority of that House, or demand the cause of their commitment, or judge the same*; and therefore they refused to discharge the prisoner, and so remanded him.

Now, if we are to look for precedents from the mother country, to support our Chancellor's conduct, in the case in question here; you see, that all the precedents from thence are against him. Yet is it most surprizing to hear, with what confidence those, who are for giving up our Privileges, assert the justice and legality of the Chancellor's determination, without a single authority to support their assertion. But, nothing has surprized me more, than to hear grave men, and some who ought to know better, leaning upon the single opinion of Lord Chief Justice Holt, as on a sufficient authority; although they must know it is none, that it was over-ruled, and that the very reverse of his opinion was declared to be the law. To such shifts are men reduced, who have a bad cause to defend! But what will become of these antiprivilegians, when even this twig, which they have laid hold of, and are forced to lean upon, is taken from them? If it can be shewn, that even Lord Chief Justice Holt's opinion, (which they consider of higher authority than that of all other judges, higher even than an adjudged case) is, in that part of the Aylebu-

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ry.

ry mens case, which mostly resembles ours, diametrically against them, and against our Chancellor's determination; will they be modest enough to give up the argument?

That it is so, will appear upon a review of that case. Every body knows, that the writ of Habeas Corpus is of two kinds. There is a writ of Habeas Corpus which the subject is entitled to by common law, and which is grantable only in Term time by the court; and, there is a writ of Habeas Corpus by the statute of 31 Car. II. which the Chancellor or any of the Judges is at all times to grant upon application. The latter is the only Habeas Corpus that a Chancellor can grant. Now the first application for an Habeas Corpus, in the above case of the Aylesbury men, was out of Term, *To the Lord Keeper of England*, upon the statute of 31 Car. II. This is therefore the application, which mostly resembles that which was made to the Chancellor here by Cooke and M'Neil; and it does, indeed, most exactly resemble it. But the Lord Keeper of England, upon the return of the writ, thought the matter of such consequence, that he did not chuse to rely upon his own judgment, nor did he chuse to depend upon any help, which he could have from the arguments of the prisoners counsel (considering these, perhaps, as men whose duty it was to mislead him) but, he called to his assistance all the Judges of England, my Lord Holt one of them. All the Judges met, and after the most mature deliberation among themselves
upon

upon the question, whether the prisoners were bailable by that statute? declared it unanimously as their opinion, THAT THEY WERE NOT, and they were accordingly remanded.

I have before shewn it, to have been the opinion of Judge Raymond and Sir William Jones, very soon after the passing the Habeas Corpus act, that, that act did not reach the commitments by either house of Parliament. Here then, is that opinion established into law, by a solemn determination of the Lord Keeper and all the Judges of England in 1704.

By what authority then, or upon what precedents could the Chancellor, on an Habeas Corpus by the statute of 31 Car. II. discharge the commitment of the Assembly? He could find no precedents at home, he could find none here; for no Chancellor or Judge before him in this island, ever presumed to question the commitments of the Assembly, and much less to discharge them. Will it be asserted, that the Assembly of Jamaica have not the Privileges of the house of Commons? It is asserted; and the advocates for this doctrine go further, and say, that we have no Privilege, but what the King is pleased to allow us. I will endeavour to prove, that, if the Assembly have not the Privileges of the house of Commons, they have no Privileges; for that, *the King cannot by law grant them Privilege*. I will endeavour likewise to shew that, if the Assembly do not hold their Privileges upon the same independent terms with the house of Commons, the people of this colony have no defence against

the assaults of arbitrary power, no security for their lives, their liberties, or their properties.

It is asserted, by those who argue against Privilege, that the King of Great Britain, as being stiled *Lord* of Jamaica and the colonies, may give to his subjects in those colonies, what measure of Liberty, and what form of Government he pleases; an assertion most absurd, false, and wicked: These Colonies are not, like his Majesty's German dominions, the *Property* of our Sovereign. God forbid, they should ever become the Property of any King or potentate upon earth! They are part of the British empire, over the whole of which his Majesty presides as the head, and so stiled and declared in many British acts of Parliament. Their inhabitants are all British subjects, entitled to the laws of England, and to its Constitution, as their inheritance; possessing their Rights and Privileges, by as free and certain a tenure, as that, by which they hold their lands, as that, by which the King holds his crown. Never was it pretended, till now, that a British subject became a slave, or forfeited any of the Rights and Privileges of an Englishman, by settling in a British colony: Even in the reign of Charles II. when arbitrary power, under the shelter of unlimited Prerogative, was making large strides over the land, there was no difference made, between the Rights and condition of subjects in the colonies, and those in England.

There

* There is a remarkable case in that reign, which sets the doctrine in a clear light. It was an action brought against a governor of Barbadoes, for some arbitrary proceedings against a gentleman there: the governor's proceedings could not, it seems, be justified by law, and he therefore pleaded his *Instructions*. After passing through the lower courts, the cause was brought by writ of error into the house of Lords; and in the pleadings of the lawyers, the Constitution of the colonies and the Rights of the colonists, are fully and finely set forth. It was argued, that the colonies could not be considered as conquered countries; since they were part of the English empire, settled entirely by Englishmen, who neither did nor could, forfeit any Right by settling in a colony: that, they had a right to the laws of England: that, the judges there were obliged to determine according to law: that *Instructions to a governor* could only be understood, as directions in matters of state and government; and could not be admitted in judicial determinations, without *Oppression and Injustice* to the subject. And this doctrine was so fully admitted, that it was not denied, even by the lawyers on the other side.

As a further proof, that this was the general sense of the nation in that reign, it is notorious, that one of the articles of impeachment, against the great Lord Chancellor Clarendon was, *That he had introduced an arbitrary*

* Cases in Parliament. Sir Richard Dutton, Plaintiff. versus R. Howell, &c.

trary Government into his Majesty's Plantations: And it is one of the crimes for which that great minister and favourite was banished, by act of parliament; and that indeed, which, in the vindication he has left of himself, he has said least to palliate or justify.

But our Rights will best be understood, by a review of the Constitution of this colony; of its beginning and progress to this time. Every body knows, that Jamaica was conquered from the Spaniards by a fleet and army sent out by Cromwell, under the Command of Admiral *Penn* and General *Venables*. After the reduction of the island, the Spaniards either quitted it, or were all driven out; so that it remained inhabited only by the soldiers, who had conquered it; and it was governed of course by military laws, until some time after the restoration of Charles II. when the measure of making it an English settlement, by sending out a colony, was adopted. The King, in order to induce his subjects to transport themselves and families hither, and become settlers, put out a proclamation, offering them many encouragements, and particularly, *That all children of any of our natural born subjects of England, to be born in Jamaica, shall from their respective births be reputed to be, and shall be, free denizens of England; and shall have the same Privileges to all intents and purposes, as our free born subjects of England.*

Nor could any thing less than this have been sufficient, to induce the free subjects of England to quit their country and friends, and
 settle

settle themselves in a remote and inhospitable climate. In pursuance of the royal promise in this proclamation, and as soon as the colony was numerous and considerable enough, to make it an object for civil government, a civil government was instituted, the same which has subsisted in it ever since. The King could not give any other form of civil government or laws, than those of England; and accordingly we shall see, that the form of government here resembles that of England, as nearly as the condition of a dependent colony can be brought to resemble, that of its mother country, which is a great and independent empire.

Here, as in England, we have *Coroners*, *Constables*, and *Justices of the Peace*. We have a court of a *Common Pleas*, court of *Exchequer*, and a court of *King's Bench*: we have a court of *Chancery*, and we have a court of *Ordinary* for the probate of wills and granting administrations. The coroner is elected by the people, the constables are appointed by the justices of the peace, the justices of the peace and the judges of all the courts act by authority of the King's commission under the broad seal. The different orders of judicature here, then, are exactly like those in England, subsisting by the same authority, and instituted for the same purposes. There is the same resemblance preserved, in the forms of our legislature. It is composed of three estates, of which the governor (as representing the King) is head. Having no order of nobility here, the place of
a house

a house of Peers is supplied by a council of twelve gentlemen, appointed by the King, which, in the system of our legislature, forms the upper house. The lower house is composed, as in Britain, of the representatives of the people, elected by the freeholders; and these three bodies form a legislature which exercises the highest acts of legislation, for it raises money, and its laws extend to the life, liberty, and property of the subject, several having suffered death upon laws passed by our legislature, even before they have received the Royal assent. These three estates ought by the constitution, to be perfectly free in their deliberations, and perfectly independent of each other. In their legislative capacities they are entitled to, and have ever enjoyed, the same Privileges with their respective bodies in the mother country, which they are intended to represent; and they do preserve, I believe, as nearly as they can, the same forms. But the two first branches cannot, from the nature of things, be made to resemble those they are supposed to stand for, as nearly as the Assembly does. For example; the King appears *personally* and in full Majesty at the head of his Parliament; his consent gives full life and duration to such bills as are offered to him by his Parliament; and he has in himself full power to approve or reject them. The Governor, though he represents the King in our legislature, yet acts by a delegated power, and exercises only such parts of the prerogative, as the King is pleased to intrust him with. Thus
too,

too, altho his consent is necessary here to the enacting laws, and his consent does give them full force while they last, yet, it can give them but a temporary existence, until the king's pleasure is known, it is from his majesty's consent that they receive their full life and duration. Our Governor is also bound to follow instructions, in his legislative capacity; and in this acts, indeed, but ministerially, and is not therefore, nor can, from the nature of things be independant.

The members of the *Council*, or upper house, do not hold their places as an inheritance, nor yet for life, but at pleasure, liable to be displaced upon any occasion by a Governor; and they have often been displaced upon very slight pretences. This body, then, is but a very imperfect representation of a house of Peers; and, because of the uncertain tenure, by which they hold their places, wants much of that independance, which is proper to every branch of the legislature in a free country. They want much too of the power of the upper house: but they have, perhaps, as great a share of it, as it would be safe to trust to so flux and dependant a body. In their legislative capacity however, they have a constitutional right to the privileges of Parliament; since in our constitution, their consent is necessary to the enacting of laws.

The *Assembly*, or lower-house, has an exact resemblance of that part of the British constitution, which it stands for here: It is, indeed, an epitome of the house of Commons.

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Called

Called by the same authority, deriving its power from the same source, instituted for the same ends, and governed by the same forms ; it will be difficult, I think, to find a reason, why it should not have the same privileges and the same powers, the same superiority over the courts of justice, and the same rank in the system of our little community, as the house of Commons has in that of Britain ; especially since all the courts of justice here are governed by the same laws, enjoy the same privileges, exercise the same powers, and hold the same rank with those, they respectively represent. Thus for example. The coroner, the justice of the peace, the judges of the court of King's Bench, Common Pleas and Exchequer, the chancellor and the ordinary, have all the power of committing for contempt. It is a power that every court has, as essentially necessary to its existence ; for no court could subsist without it : Thus, the grand court can, and frequently does, privilege a juror from arrests ; and will even discharge his horse, if taken in execution during his attendance upon the court ; and the same court does frequently grant protections to men, during the sitting of the court. The court of Chancery doth often grant protections to the suitors of that court, I believe, for an indefinite time : and, if any officer were to execute a writ upon a person so protected, the court, which granted the protection, would most certainly commit the offender. Now if a person, so committed by the court of Chancery,

cery, was to apply to the grand court for an Habeas Corpus ; and the court, upon the return of the Writ, were to discharge the prisoner, giving for reason, that they could find, neither in any Act of Parliament nor Act of Assembly, any thing to justify the commitment, and so record their judgment and reason : The court of Chancery would, I believe, consider this, as a violent attack upon its jurisdiction and authority, and resent it as such : and yet, I believe, the power of commitment by the Assembly for breach of privilege, is as well founded, in law at least, as the chancellor's ; and, I will venture to say, it is founded upon as many Acts of Parliament and Acts of Assembly. But if the grand court should go further ; and, as a reason say, the commitment was not warranted by any *instruction from the king* : the court of Chancery would, I believe, in this case also go further ; the judges would be dismissed ; there would, I make no doubt, be an information brought against them ; and they would be taught, by the sentence of more upright judges, how criminal it is for any judge to suffer himself to be governed in his judicial determinations, by *instructions*, or by any other rule than the laws of the land.

It appears then, that the inferior courts do enjoy and exercise, without interruption, certain privileges ; some of them, that of protecting men from writs of arrest or execution ; and all of them, that of committing for contempt : Let us consider, by what tenure they

hold these privileges, and from whence they are derived. Are they derived from the king, as concessions from the crown? by no means. The king has no power to grant such privileges; he has no prerogative to protect any man from arrests, nor to commit any man to prison by his command; and this I will endeavour to shew.

Every man has a right by the constitution, to prosecute his debtor by an action at law; to sue out his writ of arrest, or execution, and take the body of his debtor, unless he pays the money. All privilege from arrest is therefore a dispensing with the law; and the generality of breaches of privilege are for taking the due course of the law; and so it was said by the judges, in the case of the Aylesbury men. Before the revolution the kings of the Stuart race, did often assert a right of dispensing with the law, and did attempt to do so: but this ill-founded claim was continually denied, and their arbitrary exertions of such a power, constantly and strictly opposed by Parliament. The frequent exertions of this and some other unconstitutional powers, were the cause of all the troubles of that obstinate, ill-fated family; and at last brought on their ruin, in the expulsion of James the II. at the revolution. By the very act, which excluded the male line of that family, and which, transferring the crown into another branch, settled it upon the prince and princess of Orange, it is declared that, “Whereas the
“ late king James the II. by the assistance of
“ divers

“ divers evil counsellors, judges, and minis-
 “ ters employed by him, did endeavour to
 “ subvert and extirpate the protestant religi-
 “ on and the laws and liberties of this king-
 “ dom, by assuming and exercising a power
 “ of dispensing with, and suspending laws,
 “ and the execution of laws, without the
 “ consent of Parliament, &c. The lords spi-
 “ ritual and temporal, and Commons, pur-
 “ suant to their elections, being now assem-
 “ bled in a full and free representative of this
 “ Nation, do in the first place, (as their an-
 “ cestors in the like case have usually done)
 “ for the vindicating and asserting their anti-
 “ ent rights and liberties declare ;

First, “ That the pretended power of sus-
 “ pending laws, or execution of laws by re-
 “ gal authority without consent of Parliament
 “ is illegal.

“ *Secondly*, that the pretended power of dis-
 “ pensing with laws, or execution of laws
 “ by regal authority, as it hath been assumed
 “ and exercised of late is illegal.

In the 9th article it is said,

Ninth, “ That the freedom of speech and
 “ debates, or proceedings in Parliament,
 “ ought not to be impeached or questioned
 “ in any court out of Parliament.

“ And in another place of the same act it is
 “ said,

“ And they do claim, demand, and insist
 “ upon, all and singular the premises, as
 “ their undoubted right and liberties.

Upon

Upon which I shall only observe, that this is not a new law, creating any new privilege in the people, or clipping the prerogative; but a solemn declaration and assertion of the people's rights, and what the law and constitution of England had ever been; and it cannot now be pretended, that by the constitution, as it was settled and declared at that glorious period, the revolution in 1688, the king hath any prerogative to dispense with laws. It follows, then, that privilege from arrest being a dispensing with the law, the king has no prerogative to grant privilege. The truth is, the king neither does, nor can grant privilege, any more than he can make law; but the constitution, which allows the subject a right in law of bringing an action against his debtor, and of arresting or taking his body, does in certain cases, and in favour of certain offices and services, dispense with this law. Hence, then, is derived the privilege, that has ever been enjoyed by the king's servants, and the two houses of Parliament, and hence, those privileges and powers of granting protections, which are exercised by the courts of justice.

The king, by his prerogative, has the sole right of convening a Parliament: but that Parliament being met, their privileges are their own. By the law of the land, when the king calls any person to his service, he cannot give him any privilege; he gives him only an office, in which, by law, he is entitled to privilege. The king by his prerogative,
tive,

tive, may appoint as many courts as he pleases ; but they must be courts of law and trials by jury, that being the English constitution ; for, the king cannot institute a new jurisdiction. The court of Chancery in England, exists only by custom, as every court of Conscience in England does, and I believe it will be found, that no court of Chancery ever was erected here, by law or otherwise ; but the king, in his commission to the Governor, mentioned him as chancellor, and the Island, seeing the necessity of such a court, submitted to it. The court of ordinary is defective in its power, for it cannot enforce its orders. They are enforced in England, by ecclesiastical censures, which, I believe, the bishops would not consent to trust a Governor with, and the king has not power to grant. Indeed the whole power of the Governor, as ordinary, seems to flow from a law of this Island ; how otherwise he derives his power, whether by patent from the crown, I know not, but this demonstrates, how very cautious the crown was of exerting or extending its prerogatives, (in settling our constitution) even in those early days.

The judges commissions (as all commissions civil and military do) flow from the king : but he can neither amplify nor abridge their power or authority ; nor prescribe to them their forms of proceeding, or their modes of administering justice. These are all chalked out to them by the law, and the antient usage of their respective courts, within the limits of which

which they are bound to move : and it would be criminal in a judge to suffer himself to be governed by *instructions* in judicial determinations, so criminal, that many judges have been censured and punished, and some in Richard the II^d's time, hanged for it.

As the king cannot confer privileges ; so he has no prerogative of creating any new power, for imprisoning the subject, or abridging him of his liberty. A commitment, per *Mandatum domini regis*, is not good and must be discharged ; because the king does not act in person, but hath committed all his power judicial, some to one court and some to another : so that no body is to be committed to Gaol by the king's special command : and *Hussey*, chief justice, in 1 Henry VII. fol. 4. saith, that sir John Markham told Edward the IV. he could not commit a man ; because, if the king did wrong, the party could not have his action.

It is evident, then, that the power of commitment exercised by the two houses of Parliament, by the courts of justice, by the judges, magistrates, and all the officers concerned in the administration of justice, cannot be measured out to them by the king, in such portions as he thinks fit : It is a power with which they are invested by law, and is incident to their respective courts and offices.

In order to shew a nearer resemblance of our constitution here, to that of our mother country, and to bring the matter home to our subject, we will (if you please) review and
com-

compare the power of commitment, which is exercised by the different orders and powers of Government here, and in England. Here then, as in England, it has been already said, that every court of justice has a power of committing for contempt, a power, which seems to be inseparably annexed to every court, as essential to the support of its lawful authority. Here too, as in England, the commitments of the inferior courts may be examined, and discharged if irregular, by the court of king's bench, upon an *Habeas Corpus*, by the common law ; and by the chancellor, or any of the judges, by the statute of 31 Charles II. But the commitments of the grand court, or court of Chancery, cannot be questioned, controuled or discharged, by any inferior jurisdiction : the inconsistency and absurdity of an inferior court's controuling a superior one, would not be endured in any other country, I believe, but this.

The law of England, ever jealous and careful of the liberty, as well as the life and property of the subject, supposing that a jurisdiction in these courts without some check or controul, or some power to watch over them, might be dangerous, and leave them at liberty to overflow their bounds, and in the end overwhelm the constitution, has wisely provided against this danger, by subjecting all their proceedings to the inspection of Parliament : And it is for this reason, the court of Parliament and each house of Parliament

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enjoys,

enjoys, in the order of the British government, a rank superior to every court of justice and a power over them : and, every court in the kingdom is amenable, and answerable for their conduct, to both or either of the houses of Parliament. It is for the security of the people therefore, in their lives, liberties and properties, that the two houses of Parliament have power over the courts of justice : and it is from motives of wisdom and public good, that the commitments of either house, (as I have shewn) are not to be questioned by any other jurisdiction. The house of Commons is the grand inquest of the nation ; it is therefore, in a more especial manner, the duty of that house, to enquire into all abuses of power, and all public grievances, and to get them redressed.

It is indeed, from their representatives chiefly, that the people can hope for, or expect a candid enquiry into and thorough redress of grievances. The history of England gives us many instances of the corruption of judges and of their readiness, either from motives of corruption, or from a servile and criminal obedience to the dictates of a court, to pervert those laws to the destruction of liberty and property, which were intended for a nobler and better purpose, the security of both. But history also shews us the salutary effects of the superior power of the house of Commons ; and that it has at all times stood in the gap against oppression. Many are the instances, which occur in the English history, of

of judges brought to justice and to condign punishment, by the power of that house: some judges have been hanged, some banished, and some have been degraded, fined and imprisoned. In James the 1st's time, the great lord chancellor, Bacon, one of the greatest and wisest men the world ever saw, was yet so corrupt in the administration of justice, that he was impeached by the commons, and upon conviction, sentenced to be degraded from his dignity, fined, imprisoned and stripped of the office he had abused. And so lately as the reign of George the 1st. the lord chancellor Macclesfield was, for the same crime, rendered incapable of his office, fined and imprisoned. Every man of candour, who has any knowledge of the history and of the laws and constitution of England, must own, that the power, the authority, and superiority over ministers and courts of justice, which the constitution gives to the house of commons, has been, and ever must be, the chief bulwark of the constitution; and, that without it, the life, liberty, and property of the subject would have no security against the oppression of ministers, and the corruption of judges.

This is the law and the constitution of England; the birthright and inheritance of every Briton, and the only form of government to which he can be made subject, without his consent. These are the rights, which our fathers brought with them to this Island: Rights, which no earthly power can divest

us of, without our consent, whilst Great Britain continues a free and independant Kingdom, and her children retain any degree of love for the laws of England and for civil liberty.

To say, that our rights and possessions are secured to us by the laws of England, and yet at the same time, that we have no title to those powers and privileges, *without which they cannot* subsist, is downright impudent nonsense; it is mocking us with the sound of Liberty and Property, and robbing us of the substance.

If we are freemen, and not slaves, our liberties are as much our inheritance, as our lands. If our lives, liberties, and properties are not our inheritance, secured to us by the same laws, determined by the same jurisdictions, and fenced in and defended by the same constitution, as the wisdom of our ancestors found it necessary to establish, for the preservation of these blessings in our mother country; then, are the subjects of the Colonies, *not* freemen but slaves; not the free subjects, but the outcasts of Britain; possessing these invaluable blessings, only as tenants at will, the most uncertain and wretched of all tenures; and liable to be dispossessed, by the hand of power.

Lord chief justice Coke, (that oracle of law) being a member of the house of Commons, in the reign of Charles the 1st. said, in a conference with the Lords: “ For a free-
 “ man to be a tenant *at will* of his liberty; I
 “ will

“ will never agree to it.” It is a tenure not to be found in all Littleton. And there is certainly no other distinction between freedom and slavery, but that a freeman has his life, his liberty, and his property, secured to him by known laws, to which he has given his consent; and that he cannot be divested of any right, but by a judgment of a lawful court, and for breach of some law of the land: Whereas a slave holds every thing at the pleasure of his master, and has no law, but the will of his tyrant. Can there be a more flavish or infamous position, than, that we have no constitution in the Colonies, but what the king is pleased to give us? And is it possible, that, among a people who stile themselves Britons, men should be suffered or listened to with any patience, who have the effrontery to own maxims and to propagate doctrines, so subversive of every thing, that should be dear to a Briton! Were it possible to repress an honest indignation at the degeneracy of these men; It would be pleasant to consider the inconsistencies and contradictions they are led into in their arguments and endeavours to prove us slaves. For example. They will tell you gravely, that the subjects in the Colonies are freemen; that they hold their lands, their lives, and liberties, under the security of the laws of England; that they have a right to justice administered in the same forms, and by the same rules, as in England; and, that their courts, where justice is administered, derive their existence from the same source, have the same powers,

powers, and stand in the same degree of subordination to one another, as the courts of justice do in England. But they assert, that the representative body of the people, a court, by the laws of England, superior in rank, in power, and importance, to all those courts, is, in this Colony (by a strange inversion of the constitution) placed below them: that is in plain English: " You are freemen, entitled to all the
 " rights and privileges of Englishmen, but
 " your constitution wants the only fence, which
 " in your mother country secures to the subject
 " those invaluable blessings." Can there, in the name of God, any honest reason be given, why the order of things in this colony ought to be thus inverted? or why the representatives of the people should be so degraded in our constitution, from the rank which they hold in that of our mother country?

I am not so absurd as to say, or imagine, that the Assembly of this little Colony is any ways equal in dignity or extent of power to the house of Commons. The house of Commons represent the people of a mighty kingdom, of which this Colony is but a part: The house of Commons have for their object the whole British Empire, its interests and connexions with all the world. Our Assembly acts in a much narrower field; its operations confined and circumscribed within the limits of this little community, extend not to any other part of the king's dominions; and its power, like that of all other bodies thro' the British Empire, is subordinate to that of a British Legislature, which

which is and must, in the nature of things, be supreme over all the British dominions. I contend not for an equality of the Colonies with the mother country; they are, and in the nature of things must be dependant upon it. But I contend for a right in the subjects of this and every Colony, to the laws of England; that this Colony has a constitution, and a form of Government, resembling as nearly, perhaps as possible, that of England: That it has enjoyed this constitution ever since civil Government was first established here; and that no form of Government, repugnant to the English constitution, can be imposed upon us against our consent, without actually degrading us from the rank of Englishmen, and reducing us to a condition of slavery. Upon this foundation, then, I do affirm, that the house of Assembly of Jamaica does, and must hold the same rank in our little system, as the house of Commons does, in that of our mother country; that the court of Chancery, and all the courts of justice stand in the same degree of subordination and inferiority to it, as those courts in England do to the house of Commons; that it is necessary for the public security, that this court should have a power to question the proceedings, repress the exorbitancies and restrain the excesses of all other courts; and that this power cannot be preserved, if the court of Chancery or any inferior court is allowed to examine or discharge the commitments, or controul the jurisdiction of the Assembly, in cases of privilege.

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The wisdom and experience of our ancestors in England taught them, that it was necessary for the security of life, liberty, and property, that there should be a power somewhere in the constitution, to controul the courts of justice; and they did most wisely place the power of controuling them, where alone it could be securely placed, in the Parliament, in each house of Parliament, in *the people by their representatives*. What reason or justice is there in denying the people's representatives here, the same salutary power of controul? Is there less danger to be apprehended from the oppressions and injustice of those courts here, than in England? Is the Chancellor, are the judges here likely to be more learned, more free, more independent, more virtuous, and less corrupt, than the lord high chancellor and the judges in England? Or, are the people less to be trusted with righting themselves, than those of England? I think none of these things will be asserted; I am sure they cannot be maintained. I think, the danger that would result to this country, from the want of such a power in the Assembly, still greater, undeniably greater than it would be in England, from the weakness of our condition, which, in many instances, admits not of a constitution, so perfect and so capable of giving public security.

Let me explain myself. It has been shewn before, that our Legislature here wants, in its two first branches (from the dependent condition of the Governor and council) a good deal of that freedom, which is necessary to the
Legis-

Legislature of a free country; and that on this account, our constitution is defective in point of Legislature; those two branches not preserving by any means, so near a resemblance to the parts of a British Legislature, which they stand for here, as the Assembly does. This is a defect in our constitution, which cannot, from the nature of things, be entirely remedied; for we can never expect the happiness of the King's personal presence amongst us, nor have we any class of men, distinguished from the people by inherent honours. But there are defects, *in point of judicature*, more important than these, and more dangerous to liberty; and which may and therefore, I hope, will one time or other be remedied. In England judges hold their places, *Quam diu se bene gesserint*: here they hold them upon the slippery and uncertain tenure of, *durante bene placito*; and they are put in and displaced at a Governor's pleasure. In England, the king cannot exercise a judicial office himself; for, tho' justice and judgment flow from him, yet he dispenses them by his ministers, and has committed all his judicial power to different courts. And it is highly necessary for his people's safety, that he should do so: for (as Montesquieu, who has investigated the nature of government, and seems to be perfectly master of the subject, says upon the constitution of England) there can be no liberty, where the judicature is not separated from the legislative and executive powers. his words are, "Il n'y a point encore de liberté, si la puissance de juger n'est pas séparée de la
G " puis-

“ puissance législative ; & de l'exécutrice. Si
 “ elle étoit jointe à la puissance législative, le
 “ pouvoir sur la vie & la liberté des citoyens
 “ seroit arbitraire ; car le juge seroit législateur.
 “ Si elle étoit jointe à la puissance exécutive,
 “ le juge pourroit avoir la force d'un oppres-
 “ seur.” *There is no liberty, if the power of*
judging be not separated from the legislative and
executive powers. Were it joined with the le-
gislative, the life and liberty of the subject would
be exposed to arbitrary controul ; for the judge
would be then the legislator. Were it joined to
the executive power, the judge might behave with
all the violence of an oppressor.

Here the Governor, who exercises the exe-
 cutive and a share of the legislative power,
 holds and exercises also, two of the most con-
 siderable judicial offices ; for he is *Chancellor*
 and he is *Ordinary* : Jurisdictions, which, in
 the course of a very few years, bring the great-
 est share of the property of this country to his
 determinations. As judge of these courts,
 then, and by the influence he may acquire
 over those of all the others, the Governor is
 vested with a very unconstitutional power : a
 power, which puts the lives, liberties and pro-
 perties of the King's subjects here, too much
 in his mercy ; and, which would leave them
 no security for any thing, if the courts of jus-
 tice, particularly those in which he presides,
 were not subject to the inspection of, and sub-
 ordinate and amenable to, the representatives
 of the people, as they are in England.

I know of no power exercised by the house
 of

of Commons for redressing grievances, or bringing public offenders to justice, which the Assembly is incapable of. I know of none which it has not exercised at times, except that of impeachment; and this has been forborn, not from any incapacity in that body, but from a defect in the power of the council. An impeachment by the house of Commons in England, must be tried in the house of Lords; it being below the dignity of the Commons, to appear as prosecutors at the bar of any inferior court.

The council or upper house here, have no jurisdiction in criminal cases, and the Assembly being also above prosecuting in the inferior courts, do therefore not impeach, only because there is no judicature, which they can in this case with dignity resort to: But the Assemblies of Jamaica have always been used to enquire into the abuses and corruptions of office, the obstructions to public justice, and the complaints of subjects, oppressed by the hand of power, and to bring the offenders in such cases to justice. If an offender be in any station below the Governor, their custom has been, to lay the evidences of his guilt before his excellency, and by address desire, he may be prosecuted and dismissed from the office he has abused. If the oppression comes from any of the courts or offices, which the Governor holds, they seek for redress by an application in the same manner to his Majesty; insomuch, that public officers and magistrates of all ranks, from the justice of the Peace, up to the chief

justice, the members of his Majesty's council and the Governor, have at times been made to feel the weight of this authority, and to suffer for their excesses; so that, tho' the Assembly do not impeach, yet they exercise powers as constitutional, and every way as effectual, to protect the subject, and bring the guilty to punishment.

And I appeal to every man, who has any knowledge of the history and constitution of this Colony, whether the salutary and frequent exercises of these powers, have not been our main defence against oppression, and our best security against the ill effects of that formidable and unconstitutional share of power, which our Governors are armed with.

Our present Governor is said to possess, together with the most amiable private qualities, a great deal of learning, a very extensive knowledge of the constitution of Britain, long experience and habitudes in business, and very singular talents for government. I am ready to allow his excellency all the good qualities he possesses. If we could be always sure of good Governors, to contend for privileges were but vanity, perhaps, and folly. But, as the same God, who in his mercy gives wise and religious and just Governors, may also in his displeasure, and for our sins, permit hypocrites and tyrants to rule over us; we should not yield to any illegal or unconstitutional act of a good Governor, which may be drawn into precedent, and made an oppressive use of, in the time of a bad one.

Such

Such, I think, was our Chancellor's late discharge of a commitment by the Assembly, as well as the record of his judgment upon that occasion : a record, which does avowedly subject the jurisdiction and power of commitment of that house, to the judgment of an inferior court, and which, if suffered to stand, most effectually disarms the Assembly, and consequently, leaves the people without any protection, against the oppression and injustice of courts, or the corruption, the rapaciousness and iniquity of future Governors. To illustrate this, give me leave to suppose a very possible case. Suppose the day arrived then, when our present Governor shall be recalled : Suppose his successor already in possession of his government ; and suppose him, a man every way the reverse of this, poor, needy, and rapacious ; depending for his support upon some powerful minister ; who, having subsisted him for the former part of his life, will be ready to support him in his government, against the complaint of any injured man, in order to prevent his becoming again a burthen upon him. Suppose him, in short, sent here to fill his bags, and perhaps, to execute the vengeance of a ministry upon this unhappy Colony, for having in some instances, opposed their will and pleasure.

He begins his administration with new modelling the courts of justice, and disposing them for a blind obedience to his will. He displaces the judges, and fills the bench with such men, as he can depend upon. He displaces the Attorney General, and puts a man in that office,

office, exactly fitted for his purpose, and obsequious to his commands. Every thing thus prepared, the scene opens, and oppression of every kind, and from every quarter, is let loose upon the people. The patent officers, their deputies, and even their deputies' deputies, (for some time past very impatiently kept within bounds, by his majesty's gracious proclamation, by the integrity of the Governor, the power of the Assembly, and the justice of the courts) now resume their spirits: and (the Assembly disarmed, the tyrant bribed, the proclamation forgotten, the courts of justice secured, and all obstacles removed) they practice every kind of exaction with impunity; and like a torrent that has been for some time withheld, overflow the land, and leave every where marks of their rage and violence. In the courts of law, all is injustice and oppression; the guilty are screened from punishment by *nolle prosequi*; the innocent are harassed by informations; juries are packed, men are convicted of crimes not committed, and upon laws not violated; and obliged to give up a great part of their substance, in order to purchase a quiet enjoyment of the remainder; to purchase a temporary exemption from punishment, or to preserve a paltry existence.

But, bad and wretched as is the condition of the subject in these courts, it is worse as you go higher, *procul a fove, procul a fulmine*. Take a view of the courts where the tyrant presides in person, and you will find that corruption, injustice, rapine and oppression, know no bounds,

bounds, where judicature is uncontrouled. Here, the law of the land is trampled upon, and instructions are brought to supply its place. Here, in violation of *MAGNA CHARTA*, justice is sold; it is delayed by an unreasonable protracting of causes; it is denied by discouraging appeals from the inferior courts, and refusing them in his own. Under these discouragements commerce languishes for some time, and then forsakes us: the merchants quit the country, and the ships do not frequent it; money is scarce; the planter's produce lies on his hands, an useless drug; and the necessities of life and the implements of industry are furnished, upon the most exorbitant terms, exorbitant, in proportion to the uncertainty of payment.

In this extremity, what relief has the wretched subject? his Majesty's ears, it is true, are ever open to the complaints of his people, and his royal heart is graciously disposed to relieve them; but alas! how few of the wretched people will be capable of applying for this relief? some will be deterred by threats, and the dread of that unlimited power, which hangs over them: many more will absolutely be disabled by poverty; and the few, who may have this remedy within their reach, will be those who have been least oppressed, and who therefore least deserve compassion.

At last, the occasions of government, or perhaps an order from home, make it necessary to call an Assembly. Hope is the companion, and too often the only relief of the unhappy,
who

who are ever prone to entertain it upon the slightest grounds. These wretched people then begin to flatter themselves with hopes of relief from their representatives; from that body, which was wont to shelter them against all oppression. Fondly imagining this circumstance to be a signal, and a forerunner of returning liberty, they joyfully hail the happy omen, and expect the meeting with eagerness and impatience. The Assembly met; the unhappy and oppressed people flock in crowds to their doors, the fathers of families, disconsolate widows, and helpless orphans, dispossessed of their properties, groaning under oppression, and covered with misery and want, present themselves at the bar; set forth their grievances, and in the most moving attitudes, and with all the pathetick eloquence of distress, implore the relief and protection of the house. The house receive their complaints, and vainly imagining themselves possessed of their privileges and antient powers, they (according to the practice of their ancestors) give the redress of these grievances the first place in their deliberations. They take the examinations of the injured, and summon the wicked instruments of oppression before them, in order to gain the fullest information about their oppressions; and, according to their duty, lay the facts before his Majesty, for redress. Here they are stopt; their dreams vanish, the criminals refuse to appear before them, and the house is given to understand, that they were called together for the granting of money, and, that this (tho' the

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the least and meanest end of their original institution) is now, the only power they have a right to exercise. In vain do they order the delinquents into custody; the chancellor, by virtue of the precedent before him, discharges them; and this odious record now appears to them in its proper shape, as a most dreadful instrument of tyranny and oppression.

This, my dear sir, is a picture of the miseries we are all liable to, if the court of Chancery is suffered to determine the privileges, and controul the jurisdiction of the Assembly. Do not think it overcharged: It is not drawn from the extravagant images of an active fancy; be assured it is taken from life; from what has already happened, and does now actually exist. If we are to give any credit to written accounts of voyagers, or to the evidence of those, who have been on the spot, it is a faithful representation of what our neighbours, the American Spaniards, do at this time endure. Nor is there an oppression, injustice or hardship in all the above catalogue, which that unhappy people have not at times been made to suffer; and all, from a power in their courts of justice, which has no constitutional, or effectual controul; for where the judicature of a country is without some constitutional check, sufficient to keep it within bounds, I defy any man to shew me, what security the people of such a country can have, for their lives, their liberties, or their properties. It is true that, were

we base enough to part with our defence and give up the jurisdiction and privileges of the Assembly, it is not certain, it is perhaps not probable, that all the ill consequences I have enumerated, would at once flow from it, and be felt by the present generation, in their utmost severity. But it is probable that some, and possible that all of them might follow: And, whilst such a possibility remains, we are, to all intents and purposes, slaves, as much as the aforesaid unhappy Spaniards, or any other slaves. Our condition in that case, even tho' we do not actually suffer the same hardships, differing from theirs, only, as that of a slave who has an indulgent master, differs from his who has a cruel one; *for, it is the power which any man has of taking my life, liberty, or property without my consent, that constitutes and defines slavery.* You see, then, the importance of the present contest; and, of how much consequence it is, especially to us who are fixed to the soil; since every thing that an Englishman holds dear, is staked upon the issue of it.

In a contest, where the struggle is for *all*, it would be surprising to find any one so foolish, or so abandoned, as to contend for giving up the point; did not history (to humble the pride of man) shew us, that all ages, and all countries, have produced some so stupid, as to sell their birthright for a mess of pottage; so base and degenerate, as to court the yoke. And historical justice has in vain delivered these wretches down to posterity, as criminals,
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in the most odious colours; since the world still continues to produce such monsters. The number, indeed, of men amongst us, who contend for slavery, is, (thank God) small: and some of these, no one is sorry to find engaged against their country. They have, very happily and properly, listed in such a cause; since the immorality of their characters would disgrace a better. But there are others, on the same side, of a very different stamp, men, who wander not from the right way intentionally, but as having been misled. These, every good man is concerned for, and wishes to be reclaimed; since it is for the public good, that all honest men should think alike, and act together, in a matter of such public concern.

I think it impossible, such men should continue in their errors; if they would only take the trouble of examining by the light of their own reason, the arguments which are made use of to persuade, to frighten us out of our freedom; arguments, that affront our spirit, and insult our understandings. We are told, for instance, in the public papers, we are told it in private, that if the Assembly does not proceed to business, (their privileges unvindicated) we shall lose our Legislature. We are told further, that his Majesty in council has determined against us, and has given us to understand, that if we insist on our privileges, he shall be under a necessity of applying to his Parliament, to make laws for us. I have seen no such order of council; and

the person, who is said to report, that there is such an one, deserves so little credit, that I will not believe it, before I have better authority. Till then I shall consider it as an impudent calumny, calculated for the dirty purpose of serving some turn, and tending to cast a reflection upon the justice of the most gracious and best of kings, upon the integrity of his ministers, and the lords of his Majesty's privy council, and upon the honour and independence of a British Parliament. If I do see such an order, I cannot resist demonstration, but I shall consider it as an abuse of his Majesty's name and authority, by his ministers, and such an attack upon the people of this Colony, as, if submitted to, or forced upon them, proclaims them slaves.

By the law of England the king can do no wrong, but the law supposes his ministers may; and they are accountable to their country for every wrong or oppressive act, that is done in his Majesty's name; and every individual, wronged by their act, has a right to complain, and to seek a lawful redress. We have a king upon the throne, as incapable, from the graciousness of his disposition and the natural goodness of his heart, of doing any wrong, as he is supposed by the law to be, in his political capacity; a king, who glories in being born a Briton. Every good subject ought; every subject in this Colony. I am sure, would shed the last drop of his blood, in defence of his Majesty's crown, and to preserve it in his royal line.

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To his ministers every good subject owes respect, while they act in their several departments, for the public good. When they cease to do so; they forfeit all title to respect.

To a British Parliament, every subject throughout the British dominion, owes the highest respect and reverence, and to their laws obedience.

Resolutions of his Majesty in council, are not laws: and if they are against law, no subject is obliged to obey them. If such a resolution as is mentioned, were to be procured in the case of the meanest corporation in England; if condemned unheard, they were to be told, that, if they did not yield to the dictates of a minister, in a point of the last consequence to their freedom, his Majesty would apply to Parliament, in order to disfranchise them; what, do you think, would in this case, be the consequence? Do you think, the meanest corporation in England would submit to such an outrage? Or, would any minister be safe in committing it? I believe not. I believe, his Majesty would resent it, as an abuse of his name and authority: the Parliament would, I believe, consider it as a daring attempt to degrade them, from the glorious title of protectors of the British liberty, to the base purposes of oppression.

Unhappy Jamaica then! Is it so fallen, as to become of less consideration, than the meanest corporation in Britain? Have we deserved so ill of the nation, as to be thrown out of the protection of the laws, stript of
our

our privileges, and left to the mercy of a ministry? I will never think so. Let us not think so ill of his Majesty and of his Parliament. They do not deserve it of us. Let us not think so desperately of ourselves, we do not deserve so ill of them.

The Assembly of Jamaica have made no violent, no oppressive use of their privileges. An attack was made on their privileges, as wanton, undeserved, and unprovoked, as it was irregular and dangerous to liberty. It is invidiously said, that a power in the Assembly of commitment without controul, would be very dangerous to liberty. It is not pretended, that the Assembly have such a power without controul; there is no such thing in the English constitution. The courts of justice are controuled by one another, according to their different ranks: and the house of Commons, as their superior in rank, controuls them all. But the house of Commons is also subject to a constitutional controul, when they exceed their power or stretch it, to the purposes of oppression. If they oppress the people, the king has a power of sending them by a dissolution, back to the people; and those they have oppressed, will not again trust them with the power they have abused.

In our constitution, there is no such thing as a wrong without a remedy. But then you must apply to the proper jurisdiction. If you do not, you cannot expect a remedy. If a man, for instance, was to insist upon the officer of the crown's indicting his obligor in a bond,

bond, because he did not pay his obligation to the day; would he not be laughed at? Would any officer bring such an indictment? If a man, instead of indicting one for killing his brother, were to file a bill in Chancery; could he reasonably complain, if his bill was dismissed? If the obligee in the bond, or he who had lost his brother, had each of them applied to a proper jurisdiction, they would have been redressed. As they did not do so, could they reasonably arraign the justice of the government; or with any colour say they were denied justice? so if Cook and M'Neil chose to apply to the chancellor, in order to be released from a commitment of the Assembly; they applied to an incompetent jurisdiction; a jurisdiction that could not constitutionally release them; and altho' the Assembly had even committed them unjustly; yet they could not complain, if the Chancellor had remanded them; because they had a remedy, but would not apply to the proper place for it.

Thus you see, the attack in this instance was irregular and unconstitutional. It was wanton, because these men ought to have gone first by petition to the Assembly, where they would have been most certainly relieved. But this it seems, was too humiliating for men of their figure; and they disdained it.

It was unprovoked and undeserved; because the Assembly was going on with business in a regular course, and did not in this go out of their way; and because there never was nor
ever

ever will be, an Assembly better disposed to support administration.

If the Governor thought the Assembly were oppressing these men ; yet, as *Chancellor*, he ought to have remanded them ; tho' he might in this case have dissolved the Assembly, as Governor ; and if he had done so, the privileges of the Assembly would not have been infringed, the men would have been released, and he would not have exercised a power unconstitutional and dangerous to liberty, and would therefore have given no reasonable cause of Offence.

* * * The fate and condition of Ireland should be a document and warning to all the Colonies. Ireland, inhabited and possessed by the children of England and of those who conquered it, was once free. It is not so now. An artful Governor (Sir Edward Poinings) sent to them, perhaps, for that purpose, by Hen. VII. cheated them out of their liberties, that is, into an act of Parliament that fixed a yoke about the nation, which their posterity have ever since been groaning under the weight of ; and the Irish enjoy at this day, less liberty than any other subjects in the British dominions. This could not have happened without their consent. Let any man look over the list of Pensions on the Irish establishment, published not long since, and he will see, what a milch-cow that unhappy kingdom, (with such a curb in its mouth) is to a British ministry.

It is this honourable badge which ministers have been long endeavouring to adorn the Colonies

lonies with. In Charles the II^d's time, the Earl of Carlisle was sent hither our Governor, and brought with him a body of laws, fashioned after those of Ireland, with *instructions* to get them passed here. But our ancestors rejected them with indignation; no threats could frighten, no bribes could corrupt, no arts or arguments could persuade them to consent to laws, that would enslave posterity; and therefore we are free.

The endeavours of successive ministers were continued for this purpose, until the year 1728, when King George the II^d gave his royal assent most graciously to an act, commonly called the Revenue Act, which put an end to the contest; for in that act it is declared, “ That all
 “ such laws and statutes of England, as have
 “ been at any time, esteemed, introduced,
 “ used, accepted or received, as laws in this
 “ Island, shall be and are hereby declared to
 “ be and continue laws of this his Majesty’s
 “ Island of Jamaica, *for ever.*”

And his Majesty’s consent to this law, which may be called our great Charter, was purchased by granting therein a perpetual revenue, to his Majesty and his successors. By this law, we are precisely entitled to all such laws of England, as have ever been used here. Now, our court of Assembly, as appears by their minutes, have ever governed themselves, and exerted their jurisdiction in cases of privilege, by the law of Parliament.

The law of Parliament has ever been allowed by all lawyers and judges, to be part of the
 I law

of England; I would therefore be glad to hear, by what quirk or subtilty it could be distinguished, in our case, as *no law of England*.

Have our ancestors, in the infancy of this Colony, in the arbitrary reigns of a Charles and a James, and when prerogative was unlimited, and liberty undefined, thus nobly withstood every attempt to enslave us? And shall the present generation, now when liberty is established, and prerogative limited, do less for posterity? God forbid! The conjuncture is, most certainly, critical; our danger great, and the power we have to contend with formidable. But the spirits of a brave People should rise, in proportion to their danger. It is the part of slaves, to submit to Oppression; it is the part of cowards to shrink at the appearance of danger. We are not slaves, we cannot be made so without our consent, as long as Great Britain is free. If we suffer ourselves to be frightened out of our liberties, we are cowards: if we give them up from any other motives, we are traitors; traitors to the present generation; traitors to posterity. But if, after having done our utmost, they should be wrested from us, by a stronger power; every man who has done his duty, will have the testimony of a good conscience for his comforter; and *mens sibi conscia recti*, the greatest comfort of a good man, will be ours. His Majesty, and every honest man in Britain will think the better of us, for shewing a manly resolution and constancy, in defence of our privileges. His Majesty will think the better

better of our loyalty, for our love of liberty; for his throne is founded on liberty, and it is his greatest glory to reign over a brave, a loyal, and a free People.

To conclude, we have received our liberties, as an inheritance from our fathers, and we are bound to transmit them to our children, unimpaired. If we do so, we shall do our duty; if we do otherwise, we shall act with the basest treachery and impiety: we shall deservedly incur the censure, the contempt, the abhorrence of all honest men, and entitle ourselves to the curses of posterity.

I am, &c.

Jamaica, August 10th, 1765.

F. I N I S.

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APPENDIX

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APPENDIX.

A N

Historical account of the establishment

O F T H E

COLONY of *JAMAICA*,

Its Constitution, form of Government,
and progress from the Conquest thereof by
the ENGLISH, until the year 1684.

NOW FIRST PUBLISHED,

From a manuscript of undoubted authenticity.

1. **A**FTER the conquest of Jamaica,
part of the army being left for its
security, and the protection of those
who should be induced to settle and plant
there; martial Law became the rule of their
government, and was continued until the re-
stitution of king Charles the second.

2. But his said majesty, graciously bending
his thoughts and councils to promote the pro-
sperity of this colony, soon resolved that the
army should be disbanded, and that a civil
government should be erected, under such

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known

known customs and laws, as would render the country agreeable to the inhabitants and beneficial to his kingdom.

3. Accordingly, Colonel Edward Doyley, by his majesty's commission under the great seal of England, dated the 8th of February 1660, was appointed governor of the island of Jamaica; and was directed to proceed forthwith to the electing of a council to consist of 12 persons, whereof the secretary of the said island was to be one; and the rest to be fairly and indifferently chosen by as many of the army, planters, and inhabitants, as by his best contrivance might be admitted; and with their consent, the said governor was impowered to act according to such just and reasonable customs, and constitutions, as were exercised and settled in his majesty's other colonies, or according to such other as upon mature deliberation should be held necessary, for the good government and security of the island; provided they were not repugnant to the laws of England.

4. In obedience to this commission, a council was elected by the country in the nature of their representatives; several municipal laws were enacted, civil officers were constituted, and provision made by a revenue act, to support the charge of the government, which was then computed at 1640*l.* per annum.

5. But the Spaniards frequently disturbing them in their new possessions, the army was
still

still kept on foot ; which preventing the increase of the colony, and restraining the industry of the inhabitants, the planting and breeding of cattle during this governor's administration, were very little intended.

6. The first essay towards the establishing and settling of the government, proving therefore deficient, his majesty constituted the lord Windsor, governor of the island, and by his gracious proclamation of the 14th December, 1661 (which his lordship carried with him) granted great encouragement to the planters, and declared that all the children of his natural born subjects to be born in Jamaica, should be free denizens of England, and have the same privileges to all intents and purposes, as the free born subjects of England.

7. And, as his lordship's commission and instructions contained greater privileges, concessions and indulgences to the inhabitants, than those that were sent to his predecessors ; so they were better calculated for the more effectual establishment of the government ; by directing, that it should be *assimilated* to that of *this Kingdom* ; and to this end he was empowered to appoint his council, and to call assemblies according to the custom of his majesty's other plantations, to make laws, which were to be in force for two years and no longer, unless confirmed by his majesty, and upon emergent necessities to levy money &c.

8. My lord Windfor, not enjoying his health, remained there but a few months: however, he settled the militia, and consequently disbanded the army.

9. Upon his departure, in October or November 1662, Sir Charles Lyttelton*, at that time chancellor of the island, succeeded in the government, and in October 1663, by advice of his council, called the first assembly, which consisted of 30 persons; and upon their meeting they enacted a body of laws, with an act for raising money for the publick uses wherein the *collection, disposal and accounting, was appointed by the assembly.*

10. In 1664, Sir Charles Lyttelton, left the government under the care and direction of the council, who chose Colonel Thomas Lynch president, 2500 of the inhabitants were then regimented, besides 4 or 500 more, dispersed in the country; and their provisions (as he asserted) infinitely increased.

11. This account was so acceptable to his majesty in council, that Sir Thomas Modyford was recalled from Barbadoes, and by commission under the 15th November 1664, was constituted governor of Jamaica, with power to erect judicatories, to call assemblies and with their consent, to *make, ordain and constitute, all manner of LAWS, STATUTES and ORDINANCES, and upon imminent occasions to LEVY MONEY* for the good and safety of the publick; which laws were to be, as
near

* Grandfather to the late governor.

near as might be, suitable and agreeing with the laws of England.

12. Accordingly in his first year he called an assembly, who enlarged and re-enacted the former laws, and these upon some assurances given him of his majesty's approbation, were continued in force during his government, which ended in the year 1670.

13. By the muster rolls of the militia, about this time, transmitted to the lords of the committee for trade, it appears, their number was 2720; and that the number of seamen in and about the island was, 2500; privateering being then the great business and concern of the island.

14. But an end being put to that trade, soon after the conclusion of the American treaty with Spain, and the government being confirmed by the new governor's (Sir Thomas Lynch) commission and instructions, the improvement of the island was industriously prosecuted and encouraged, and the planters increased, by the constant accession of others, from all the several parts of his majesty's dominions.

15. An assembly was call'd soon after his arrival, by whom the laws that were passed and expired in the time of the preceding governor, were altered and enlarged; and in two years after, not being confirmed, they were again re-enacted and sent to England, for his majesty's royal approval.

16. My

16. My Lord Vaughan succeeded Sir Thomas Lynch in 1674, his commission named his counsellors, directed his calling assemblies to be chosen by the freeholders and planters, according to the custom and usage of Jamaica : who were to be deem'd the representatives of the people, to make laws as near as conveniently might be, agreeable to the laws and statutes of England ; these laws to continue in force for two years, but none to be re-enacted, except upon very urgent occasions, and in no case more than once, except with his majesty's express consent.

17. His lordship immediately summoned an assembly, and passed all the laws that were then expired, which were sent to England to be confirmed or otherwise disposed of as his majesty should determine : but not being returned at the end of two years, another assembly was called, by whom all the same laws were re-enacted except the revenue act, which was rejected by his lordship.

18. As my lord found the island in a flourishing condition, and that the people had been easy and well pleased under the mild and successful government of his predecessor, so by his indulgent, steady and impartial conduct, he greatly contributed to the increase, both of the strength and trade of the island.

19. By an account of the Militia sent home, not long after his departure, they were augmented

mented to 4526 ; a greater number than they have ever since mustered.

20. And the planters exported, in the 4 years from the commencement of his government, very near three times as much sugar as they had exported, in the three and three quarters preceding years.

21. Nevertheless, this prosperous course was soon interrupted, for upon the examination of the laws then in force at Jamaica, such objections were raised by the lords of the committee for trade, that his majesty was pleased to reject some and direct the new modelling of the rest, which were to be sent back, that *they may be passed by the assembly after the manner in Ireland*, according to POYNINGS LAWS, to which rule they were to be bound for the future.

22. And the assembly having imprisoned one of their members, for several misdemeanors and breaches of orders of their house ; the privileges they insisted on as natural and necessary to the representatives of that colony, which were *the same that the house of commons have in England*, were likewise controverted.

23. The aforesaid laws were accordingly returned to Jamaica in 1678, by the Earl of Carlisle their new governor, who on his arrival, called an assembly, in order to pass the same ; but they being very much dissatisfied with this frame of government, and with their losing *their deliberative part in making and passing their laws*, REJECTED THEM.

24. The

24. The next year 1679, the said laws were again transmitted thither, under the broad seal of England, and tho' his majesty was advised to furnish his governors and their council for the time to come, with power to raise money, as had been practiced in their infant state, *if they did not comply with his royal commands*, YET THEY AGAIN REJECTED THEM.

25. It would be too tedious to enter into the arguments and reasons, that on the one hand were urged to oblige the assembly to comply; and on the other, that were offered to support the necessity of re-establishing their late constitution.

26. However it must be observed, that on the 33d of June 1680, his majesty in council was pleased to order, that the following questions should be proposed to all the judges, *viz.*

27. Whether by his majesty's letter, proclamation, or commission, annexed, his majesty had excluded himself from the power of establishing laws in Jamaica? it being a conquered country, and all laws settled by authority there, being now expired.

What was reported hereupon by the judges doth not appear; neither is it material, since his majesty very graciously condescended, after hearing colonel Long and colonel Beeston (who were deputed by their colony to support their allegations) and the planters and Merchants then residing in London, by and with the

the advice of his most honourable privy council to determine in their favour; and accordingly by a new commission to the Earl of Carlisle, under the broad seal dated the 3d of November following, not only restored to the island their former government, and all privileges they had hitherto enjoyed, but enlarged them, and in consideration of the languishing state of the country, granted, that the quit-rents, &c. there arising to his majesty, should hereafter be appropriated and applied, to the use of the publick.

29, The Earl of Carlisle having left Jamaica during this debate, Sir Thomas Morgan, acted as lieutenant governor in his absence: his lordship declining to return, his majesty gave the island a further instance of his great favour and goodness, and in 1681 appointed Sir Thomas Lynch, governor, and impowered him, with the advice and consent of the *Assembly and Council*, to make such laws as should be conducive to his majesty's interest, and agreeable to them; accordingly in 1682, several new laws more passed by the *Governor, Council and Assembly*, whereof 28 on the 23d of February following, were approved and confirmed by his majesty, for seven years, and those with some others, that compleat the first volume now in print, on the 17th of April, 1684, were approved and confirmed by his majesty for twenty one years, and are still in force.

30. In this manner was the legislature of Jamaica at last happily settled, to the great satisfaction and encouragement of the inhabitants; and as this government was assimilated as near as possible to the government of this their mother kingdom, so their assemblies were **ALLOWED, AND ENJOYED**, the same privileges that the house of commons possessed there.

31. And since my Lord Windsor, under whose commission assemblies were first established, were directed to do and execute all things according to such reasonable laws, customs and constitutions as should be settled, provided they were not repugnant to the laws of England, but agreeing thereunto as near as the condition of affairs would permit; and that the succeeding governors commissions are of the same import, as it cannot be doubted, it was absolutely necessary the assembly should have rule to go by; so it is submitted, whether the governors had it not in their power to prescribe this known rule to themselves, and to the assembly, and whether they could lay down a better.

32. Their opinions however both of the constitution and privileges of the assembly of Jamaica, will appear by what follows.

In the year 1669 Sir Thomas Modyford answers to the lords of the committee for trade, upon their enquiring how the legislature was settled.

33. That

33. That the legislative power of making and repealing laws, is settled in the governor as his majesty's commissioner; in his majesty's council, as representing the lords house; and in the assembly, composed of the representatives of the freeholders, two persons elected out of each parish, and these chosen as the commons of England, being an humble model of our high court of parliament. Each of the respective bodies enjoying a negative, as well as an affirmative vote.

34. The lord Vaughan, on a question that arose about the method of passing laws, declared to the assembly, that he should guide himself *according to the usage and custom of parliaments in England*.

35. The assembly, in an address to the earl of Carlisle upon the objections that were made against the imprisoning their members for misdemeanors, &c. say,

36. They hope it is justifiable, the king's governor having assured them that they have the power over their members which the house of commons have, and all speakers here praying and the governor granting, the usual petitions of speakers in England.

37. Sir Thomas Lynch, about the same time being called upon to give an account of the government of Jamaica, argues thus.

If the king's commissions have appointed assemblies, and if they have been constituted in all the colonies from their first establishment as a government, the most just and like

this of England, then they hope that they alone of all the colonies, shall not be retrenched in any of the privileges, natural to such assembly; and upon the aforesaid design relating to the passing of their laws, he offers it as his opinion, that it was probable the assembly would reject the laws, and that it was possible, the council might join with the governor, to order those laws to be continued; but he verily believed that they would not continue the revenue bill, for that they thought peculiar to the assembly.

38. In said Sir Thomas Lynch's state Jamaica, which he transmitted to England in 1663, when he was placed the third time at the head of government, and after its re-establishment, he asserts.

That all the methods and proceedings of of the assembly were conformable to those of English parliament, as much as so little a body may to so great a one.

And in another account he adds thus. The king, by his charter of government as commissioner has constituted assemblies, that are umbroes of an English parliament.

39. Neither were such concessions inconsistent with the antient nor the modern constitutions of colonies, for as Grotius observes, the Grecian colonies (which constituted particular common wealths) were to enjoy equal privileges and liberties with their mother cities; and those that were afterwards planted by the Romans, were models of that republic;

lick ; notwithstanding they kept them in subjection and dependency ; to which example, all the nations in Europe have in general, ever since respectively adhered.

40. From the whole therefore it's very apparent, by what rule the assemblies of Jamaica, were at first constituted and afterwards directed ; and since neither the standing rules of that assembly, nor the privileges they enjoyed, were ever disallowed at home or opposed abroad, during the reign of king Charles the II^d, it was manifest upon what foundation they stood.

41. And it is humbly submitted whether any frame of government less perfect or less acceptable to the inhabitants, could have supported them under those terrible calamities and severe judgments, to which they have been since exposed, or have enabled them to sustain the losses and damages they have suffered ; and to surmount those difficulties, under which they have long laboured.

An extract from the

Votes of the honorable house of Assembly

O F

J A M A I C A ;

Relative to the commitment of *Thomas Wilson, Peirce Cooke, and Lachlan M Neil*, into custody of the Messenger, on the complaint of *John Olyphant, Esq;* a member of the house, for a breach of privilege; with the resolutions of the house thereon, and in consequence thereof.

Sabbati, 8 Die Decembris, 1764.

UPON complaint made to this house, of a breach of privilege committed by *Richard Thomas Willson*, in executing a writ of venditioni exponas on the coach-horses of *John Olyphant, Esq;* a member of this house, at the suit of *Mr. Pierce Cooke*.

Resolved, That the messenger attending this house, do apprehend the said *Richard Thomas Willson*, and other the persons concerned in executing the said writ, and bring him or them

them in custody, to answer his or their breach of privilege for the same.

Ordered, that Mr. Speaker sign a warrant for that purpose.

Jovis 13 Die Decembris, 1764.

The messenger being called in and asked by Mr. Speaker whether he had executed the warrant against Richard Thomas Willson, for a breach of privileges of this house, informed the house that he had, and had him then in custody.

Ordered, That the messenger do bring the said Richard Thomas Willson to the bar of the house to-morrow morning, to answer his breach of the privileges of this house.

Veneris 14 Die Decembris, 1764.

Richard Thomas Willson according to order was brought to the bar of the house to answer his breach of privilege, in executing a writ of venditioni exponas on the coach horses of John Olyphant, Esq; a member of this house, and it appearing upon his examination that Mr. Pierce Cooke was assisting in the said execution.

Resolved, That Mr. Pierce Cooke in assisting the said Richard Thomas Willson in the execution of the said writ, is guilty of a breach of the privilege of this house.

Ordered, That the messenger of this house
do

do apprehend the said Pierce Cooke, and bring him to the bar of this house to-morrow morning, to answer his breach of the privileges of this house, and that Mr. Speaker sign a warrant for that purpose.

Ordered, That Richard Thomas Willson be remanded into the custody of the messenger.

Sabbati, 15 Die Decembris, 1764.

Resolved Nemine Contradicente, that it has appeared by the examination of Richard Thomas Willson, that Lachlan M'Neil, deputy-Marshall, did direct him to execute a writ of venditioni exponas against John Olyphant, Esq; a member of this house.

Resolved Nemine Contradicente, that the said Lachlan M'Neil, has, by such direction been guilty of a breach of the privileges of this house.

Ordered, that the messenger of this house do apprehend the said Lachlan M'Neill and bring him to the bar of this house on Tuesday morning next, to answer his breach of the privileges of this house; and that Mr. speaker sign a warrant for that purpose.

Resolved Nemine Contradicente, that no member of this house during the continuance of this assembly have any privilege except for his person only, against any of his majesty's subjects, in any suit or proceeding in courts

of

of law or equity for any longer time than the house shall be actually sitting for dispatch of business.

Martis, 18 Die Decembris, 1764.

His excellency in his majesty's name, by and with the advice of his council, was pleased to prorogue the assembly until Wednesday the 19th day of December instant.

Mercurii 19 Die Decembris, 1764.

THE house being met, according to prorogation, Mr. Chaloner Arcedeckne waited on his excellency, and acquainted him therewith.

A message from his excellency by the provost marshal, acquainting the house, his excellency, in his majesty's name, commanded the attendance of the house immediately in the council chamber; accordingly Mr. Speaker, with the house attended, and being returned, Mr. Speaker reported, they had attended his excellency, and that he was pleased to make them a speech, whereof Mr. Speaker said (to prevent mistakes) he had obtained a copy, which being read by the clerk, was ordered to be entered, and is as follows :

Mr. Speaker, and Gentlemen of the Assembly,

AS I passed many acts during your late season, and the session of the year is so far advanced, I shall only recommend to you to grant the proper supplies for the support of government; and I hope you will avoid all unnecessary delays, as your presence in your respective districts as magistrates and
c military

military officers will be particularly beneficial at this juncture.

A motion was made, that an address be presented to his excellency for his speech at the opening of this session.

Ordered, that Mr. Long, Mr. Edwardes, and Mr. Attorney-General, be a committee to prepare and bring in the same.

And that his excellency's speech be referred to the said committee.

Resolved, that the rules of the last session be the standing rules of the house.

Resolved nemine contradicente, That every member of this houses enjoy the privileges of his person against arrest and imprisonments, in such manner as has been heretofore used and accustomed.

Resolved nemine contradicente, That no member of this house have any privilege in cases of treason, felony, breach of the peace, or forcible entries, or forcible detainers.

Resolved nemine contradicente, that no member of this house hath any privilege in regard to his goods and chattels, except such as are necessary for his accommodation during his attendance on the house.

Resolved nemine contradicente, That no member of this house hath any privilege against payment of any aids, supplies or taxes, granted for the support of his majesty's government of this island, or of any parish duties.

Resolved nemine contradicente, That the reflecting upon the proceedings of this house,
or

or any member thereof, for, or relating to the service therein, is a high violation of the rights and privileges of this house.

Resolved nemine contradicente, That the misrepresenting the proceedings of this house, is a breach of privilege and destructive of the freedom of this house.

Resolved nemine contradicente, That to assert that this house have no power of commitment but of their own members, tends to the subversion of the constitution of the house.

Resolved nemine contradicente, That no person committed for breach of privilege by order of this house, ought to be discharged during the session of assembly, but by order or warrant of this house.

Resolved nemine contradicente, That Richard Thomas Wilson, who was in custody of the messenger attending this house the last session of assembly, for a breach of the privileges of this house in executing a writ of venditioni exponas on the coach horses of John Olyphant, Esq; a member of this house, the house then sitting, and Mr. Pierce Cook, who was likewise in custody the last session of assembly, for directing the said Richard Thomas Wilson in the execution of the said writ, and Iachlan M'Neil, deputy-marshal, who was likewise in custody the last session of assembly, for directing the said Richard Thomas Wilson to execute the said writ, be again severally taken into the custody of the messenger, and that Mr. Speaker sign warrants for that purpose.

Resolved nemine contradicente, That Edward Bolt, Esq; messenger of this house, in

having received and detained, and in receiving and detaining in custody any person or persons, committed by order of this house, shall have the assistance and protection of this house.

Ordered, That the above resolutions be printed in the public news papers.

Resolved, That all standing committees of the last session be revived.

A motion was made, that a committee be appointed to bring in a bill, for the better qualifications of persons elected to serve as members in any future assemblies of this island.

Ordered, That Mr. Attorney general, Mr. Arcedeckne, and Mr. Long, be a committee to prepare and bring in the same.

Resolved, That this house will immediately resolve itself into a committee on his excellency's speech.

The house according to order, resolved itself into a committee on his excellency's speech, and after some time spent therein Mr. Speaker resumed the chair, and Mr. Chief Justice from the committee, reported they had gone through the same, and had come to several resolutions, which they had directed him to report, when the house would be pleased to receive them.

Ordered, that the report be now made.

Then Mr. Chief Justice in his place read the resolutions, and delivered them in at the table, which being again severally read by the clerk, were agreed unto by the house, and are as follows:

1st. Resolved, It is the opinion of this committee, that a committee be appointed to
bring

bring in a bill to oblige the several inhabitants of this island, to provide themselves with a sufficient number of white men, white women or children, or pay certain sums of money in case they shall be deficient, and applying the same to several uses; to protect freeholders on the days of choosing church-wardens and vestry-men; and to ascertain who shall be deemed duly qualified to vote at such elections.

Ordered, That Mr. Chief-Justice, Mr. Redwood, and Mr. Taylor, be a committee to prepare and bring in the same.

2d. Resolved, It is the opinion of this committee, that a committee be appointed to bring in a bill, for laying a duty on all wines, rum and other spirituous liquors retailed within this island, and apply the same to several uses; and for laying a further tax on licences to be granted for the retailing of wine and other liquors.

Ordered that Mr. Attorney-General, Mr. Levingston, and Mr. Goulbourne, be a committee to prepare and bring in the same.

3d. Resolved, that it is the opinion of this committee that a committee be appointed to bring in a bill for raising several sums of money, and applying the same to several uses, for subsisting for one year the officers and soldiers of his majesty's 36th regiment of foot.

Ordered, That Mr. Long, Mr. Bourke, Mr. Provost, be a committee to prepare and bring in the same.

Mr. Chief Justice according to order, presented

presented to the house a bill to oblige the several inhabitants of this island, to provide themselves with a sufficient number of white men, white women or children, or pay certain sums of men in case they shall be deficient, and applying the same to several uses; to protect freeholders on the days of choosing churchwardens and vestry-men; and to ascertain who shall be deemed duly qualified to vote at such elections, which was received and read.

And ordered to be read a second time tomorrow morning.

Mr. Attorney-General according to order, presented the house a bill for laying a duty on all wines, rum and other spirituous liquors retailed within this island, and applying the same to several uses; and for laying a further tax on licences to be granted for the retailing of wine and other liquors, which was received and read.

And ordered to be read a second time tomorrow morning.

Mr. Long according to order, presented to the house a bill for raising several sums of money, and applying the same to several uses, for subsisting for one year the officers and soldiers of his majesty's 36th regiment of foot, which was received and read.

And ordered to be read a second time tomorrow morning.

Jovis 20 Die Decembris, 1764.

THE messenger being called in and examined, informed the house that he had executed the warrants against Mr. Pierce Cooke and Lachlan M'Neil, and that he had been served with two writs of habeas corpus, signed

by his excellency, as chancellor, to which he had made returns and had attended his excellency with the said Mr. Pierce Cooke and Lachlan M'Neil, and that his excellency as chancellor, had ordered him to bring them before him to-morrow morning at ten o'clock, when he ordered they should be heard by council, on the subject matter of their commitment.

Resolved, that Edward Bolt, Esq; Messenger of this house do keep the said Mr. Pierce Cooke and Lachlan M'Neil, in close custody.

Veneris 21 Die Decembris, 1764.

THE messenger being called in and examined, informed the house, that he had carried Mr. Pierce Cooke and Lachlan M'Neil before his excellency, agreeable to his order of yesterday; and after his excellency had heard council in a court of chancery on the cause of commitment, his excellency as chancellor, had discharged them from his custody.

Resolved, That this house will immediately resolve itself into a committee of the whole house.

Then the house according to order resolved itself into a committee of the whole house; and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Chief-Justice from the committee reported they had come to some resolutions, of which they had directed him to make a report, when the house would be pleased to receive the same.

Ordered, that the report be now made.

Then Mr. Chief-Justice in his place, read the resolutions, and delivered them in at the table, and the first resolution being again read by the clerk, is as follows: 1st. Re-

1st. Resolved, That it is the opinion of this committee, that his excellency William Henry Lyttelton, Esq; in taking upon himself as chancellor to determine against the privileges of this house, and to discharge Pierce Cooke and Lachlen M'Neil, who were committed to the custody of the messenger of this house, for a contempt and breach of the privilege of this house, has acted in an unjustifiable manner, and has been guilty of a flagrant breach, contempt and violation of the privileges of this house, and the liberties of the people.

A debate arising, and the question being put, it passed in the affirmative, yeas 18, noes 4.

The 2d, 3d, and 4th resolutions being again severally read by the clerk, were agreed unto by the house, and are as follows:

2d. Resolved Nemine Contradicente, That it is the opinion of this committee, that this house cannot with any dignity to itself or justice to the people, proceed to any other business, under such a violent and unexampled breach of its privileges.

3d. Resolved nemine contradicente, That it is the opinion of this committee, that this house will not proceed to any other business until it shall be right in its privileges, and has received ample reparation for the indignity that has been offered to this house.

4th. Resolved nemine contradicente, That it is the opinion of this committee, that Mr. Pierce Cooke and Lachlan M'Neil, be severally taken into and kept close in the custody of the messenger of this house, for a contempt and breach of the privileges of this house,

and that Mr. Speaker do sign warrants for that purpose.

The 5th. resolution being again read by the clerk, is as follows ;

5th. Resolved, That it is the opinion of this committee, that a committee be appointed to draw up an humble address to his majesty, most humbly representing, that the assemblies of this island have from the earliest establishment of civil government in this colony, enjoyed all the rights and privileges inherent in them as the representative body of the people; that among other rights and privileges derived to them, from the reason and nature of their election and constitution, and from the grace, grants and concessions of his majesty's royal predecessors, as well as from prescriptive right and custom, they have uninterruptedly enjoyed a privilege of freedom from arrests, both of persons and goods necessary for their accommodation, during their session, conformable to ancient usage and custom, except in cases of treason, felony, and breach of the peace, taxes or other monies due to his majesty, for the support of the government of this island : that without these privileges the intent of assembling for dispatch of the public business would be defeated, their attendance interrupted, their orders despised, and they themselves exposed to the most flagrant contempts and indignities, as being no more than the shadow of a body, having no power or authority whatsoever; and as they have enjoyed a con-

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tinued

tinued and uninterrupted exercise of the right and jurisdiction of committing their own members, as well as others, guilty of any breach of their privileges, so they esteem this right to be essential to their very being as a free assembly; that it is therefore a duty incumbent on us, to remonstrate to his majesty, that a writ of venditioni exponas, was lately executed upon the coach horses of one of our members during the sitting of the house, and that upon complaint made to the house, the persons concerned in injurious breach of our privileges, were committed into the custody of our messenger, that the persons so taken into custody, applied to, and obtained from his excellency William Henry Lyttelton, Esq; as chancellor, writs of habeas corpus; and his excellency in chancery, having heard the arguments of council at law, against the cause of the commitment, did take upon himself, in a most unprecedented manner, to determine against our privileges, to pronounce the commitment by the speaker's warrant illegal, and to order the parties to be discharged out of custody of our messenger, and that as nothing can so effectually contribute to render a people prosperous and happy, as a just conservation and support of their ancient and fundamental rights, franchises, jurisdiction and privileges; and as we are fully persuaded that the happiness and welfare of his subjects are the chief objects of his majesty's care and attention, most humbly to beseech his majesty, that he will be graciously pleased to interpose his royal authority, and by restraining his excellency's arbitrary exercise of power as chancellor, protect us from such open and manifest

violations, destructive of our rights, and subversive of our constitution, and most earnestly to implore his majesty in his royal goodness to grant us such other redress as to his majesty in his wisdom shall seem meet.

A debate arising, and the question being put, it passed in the affirmative yeas 19, noes 3.

Ordered, That Mr. Long, Mr. Bourke, Mr. Price, Mr. Dowell, and Mr. Edwardes be a committee to prepare and bring in the same.

Ordered, That the 1st, 2d, 3d and 4th of the above resolutions be printed in the public news papers.

N. B. *Early next morning the house was prorogued by proclamation and some time after dissolved.*

A Copy of the speaker's warrant, by which Mr PIERCE COOKE was taken into the custody of the messenger of the assembly, and also a copy of the decree of his excellency the chancellor, by which he was released, and discharged, from the custody of the messenger. Jamaica, ff. Mercurii, 19th die Dec. 1764.

Whereas Mr. PIERCE COOKE was in custody the last session of assembly *for a breach of the privileges of the house* in assisting Richard Thomas Wilson in executing a writ of venditioni exponas on the coach horses of JOHN OLYPHANT, Esq; a member of the house.

These are therefore to will and require you to take into your custody the body of PIERCE COOKE, and him safely keep until he shall be discharged *by order of the house*, and for your so doing this shall be your warrant. Given under my hand and seal the day and year above written.

Charles Price, Junior, Speaker. □
To Edward Bolt, Esq;
Messenger of the Assembly.

(xxviii)

At a high court of chancery held at the town of St. Jago de la Vega, on Friday the 21st day of December, 1765.

Rex

v

Cooke

The body of PIERCE COOKE, Gentleman, being this day brought into court before *His excellency the chancellor*, by EDWARD BOLT, Esq; pursuant to the order of this honourable court made yesterday, upon the return of the writ of habeas corpus, issued under the seal of this court, tested the 20th day of December instant, directed to the said EDWARD BOLT returnable before his *excellency the chancellor* immediate; and upon hearing of what was alledged by council *on behalf of the said* PIERCE COOKE on the said return *his excellency the chancellor* was pleased to declare; that it did not appear to him *from the words of any act of parliament or of any act of the governor, council and assembly of this island, or of his majesty's commissions or INSTRUCTIONS to his excellency as governor of this island, or by any other means whatsoever.* That the commitment of the said PIERCE COOKE into the custody of the said EDWARD BOLT IS LEGAL. And *his excellency the chancellor* was therefore pleased to order, adjudge and decree, and it is hereby ordered, adjudged and decreed, that the said PIERCE COOKE BE, BY THE AUTHORITY OF THIS COURT, *released and discharged from the custody of the said* EDWARD BOLT.

Vera copia extur

Geo. Ramfay Reg. Cur. Can.

A
L I S T
O F
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